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1 (Jury out.)

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Be seated, please.

4 Are the parties prepared to read into the record  
5 the items from the list of pre-admitted exhibits used during  
6 yesterday's portion of the trial?

7 MS. HENRY: Yes, Your Honor.

8 THE COURT: Please proceed.

9 MS. HENRY: My list is a lot shorter today. PX-29  
10 and PTX-1469.

11 THE COURT: All right. Do Defendants have any  
12 objection to that rendition by Plaintiff?

13 MS. SMITH: No, Your Honor.

14 THE COURT: Do Defendants have a similar rendition?

15 MS. SMITH: Slightly longer, Your Honor.

16 THE COURT: Please proceed.

17 MS. SMITH: Thank you.

18 DX-1, DX-2, DX-3, DX-6, DX-18, DX-42, DX-49, DX-52,  
19 DX-86, DX-95, DX-137, DX-159, DX-214, DX-236, DX-250,  
20 DX-277, DX-282, PTX-3, and PTX-1014.

21 THE COURT: All right. Any objection from  
22 Plaintiff?

23 MS. HENRY: No, Your Honor.

24 THE COURT: All right. Thank you, counsel.

25 Are there any other matters we need to take up

1 before we bring in the jury, counsel?

2 MR. BLACK: No, Your Honor.

3 THE COURT: Anything from Defendants?

4 MS. SMITH: No, Your Honor.

5 THE COURT: All right. Do we have Dr. Acampora in  
6 the courtroom?

7 If you'll return to the witness stand, sir. And I  
8 remind you, you remain under oath.

9 And, Mr. Black, if you're going to cross, you may  
10 go to the podium.

11 MR. BLACK: Thank you, Your Honor.

12 THE COURT: Let's bring in the jury, Mr. Johnston.

13 COURT SECURITY OFFICER: All rise.

14 (Jury in.)

15 THE COURT: Good morning, members of the jury.  
16 Please have a seat.

17 We'll continue with the examination of Dr. Tony  
18 Acampora, and Plaintiffs will proceed with cross-examination  
19 of the witness.

20 Mr. Black, you may proceed.

21 MR. BLACK: Thank you, Your Honor.

22 ANTHONY ACAMPORA, Ph.D., DEFENDANTS' WITNESS, PREVIOUSLY

23 SWORN CROSS-EXAMINATION

24 BY BLACK:

25 Q. Dr. Acampora, good morning.

1 A. Good morning.

2 Q. Let's get right to the heart of it. You've come here  
3 today to kill Dr. Jorgensen's patents; isn't that right?

4 A. I came to offer opinions concerning the validity of  
5 Dr. Jorgensen's patents.

6 Q. And if the jury accepts your opinions and finds in favor  
7 of the Defendants, there will be a federal court judgment  
8 stating that these patents are invalid for all time; isn't  
9 that right?

10 A. That's correct.

11 Q. Now, the burden is on the Defendants here, right?

12 A. That's my understanding.

13 Q. And the burden is by clear and convincing evidence,  
14 right?

15 A. That also is my understanding.

16 Q. And there's two parts to that, right? There's clear and  
17 convincing, right?

18 A. Yes.

19 Q. So if the jury were to conclude that the presentation  
20 that you did yesterday was not clear to them, they can stop  
21 right there and check the box for validity on the jury  
22 verdict form; isn't that right?

23 A. No. That's the jury's decision to make. I'm not about  
24 to tell them how to make that.

25 Q. Well, you would agree, wouldn't you, that all issued

1 patents are accorded a presumption of validity based on the  
2 presumption that the United States Patent and Trademark  
3 Office acted correctly in issuing the patent.

4           You agree with that, don't you?

5 A. That is my understanding, yes.

6 Q. Okay. Now, you're an expert in this case. There's no  
7 ambiguity about whether you're an expert or a fact witness,  
8 right?

9 A. Correct.

10 Q. And your rate is \$725.00 an hour.

11 A. That's correct.

12 Q. And you've expended something on the order of 250 to 300  
13 hours so far on this case, right?

14 A. That's correct.

15 Q. So we have somewhere in the neighborhood of \$200,000.00  
16 for you and something in the neighborhood of \$2,000.00 [sic]  
17 for Dr. Wicker, who we heard from yesterday, so there's over  
18 \$400,000.00 that's been spent on the two of you alone in  
19 preparing expert reports in this case.

20           THE COURT: Slow down, Mr. Black, please.

21           MR. BLACK: Yes, Your Honor.

22           THE COURT: Please slow down.

23 A. Can you repeat the question, please?

24 Q. (By Mr. Black) You spent over \$200,000.00 of time on  
25 this case so far, correct?

1 A. Correct.

2 Q. And we heard --

3 A. Approximately 200,000.

4 Q. And we've heard from Dr. Wicker that he spent over  
5 \$200,000.00 of time on the case, correct?

6 A. Correct.

7 Q. And that means that over \$400,000.00 has been expended  
8 by the Defendants simply in preparing the expert reports in  
9 this case, correct?

10 A. That's correct.

11 Q. Now, it would be crazy to pay all that money if there  
12 were no potential damages here; is that right?

13 A. You'd have to ask the Defendants.

14 Q. Let's talk about your report. Yesterday, I held up  
15 Dr. Wicker's report. Do you remember that?

16 A. I did.

17 Q. It was about this thick. Do you remember?

18 A. Yes.

19 Q. This is your report. We had to put it in two binders;  
20 is that right?

21 A. Even thicker, yes.

22 Q. Your report is 959 pages, correct?

23 A. Yes.

24 Q. 3,498 individual paragraphs, correct?

25 A. Correct.

1 Q. Plus attachments, right?

2 A. Correct.

3 Q. Including the prior work that you've done in other cases  
4 and other things like the materials that you considered,  
5 correct?

6 A. And my CV, yes.

7 Q. And your CV.

8 How much time did you spend just in the  
9 report-writing process?

10 A. Can I ask a clarification on that?

11 Q. Well --

12 THE COURT: Tell him you either -- tell him you  
13 don't understand the question, if you don't understand the  
14 question.

15 A. I don't understand the question.

16 Q. (By Mr. Black) Of the 250 hours that you spent,  
17 excluding the time preparing for depositions from -- for  
18 your testimony here, how many hours did you spend in the  
19 process?

20 A. As I understand the question, probably on the order of  
21 approximately 150 hours.

22 Q. Okay. 150 hours, 959 pages, that's 6 pages an hour,  
23 right?

24 A. Right.

25 Q. And this report is pretty dense. It's single spaced.



1 Lots of technical material in there, right?

2 A. That is correct.

3 Q. Now, your report-writing process does not involve you  
4 doing the typing of your report on your own, correct?

5 A. Partially.

6 Q. You receive a report from the lawyers that you're  
7 working with and then you edit it, correct?

8 A. Partially.

9 Q. You did not type all of your report, correct?

10 A. That's correct.

11 Q. Your report was prepared based on numerous telephone  
12 calls in which you expressed what your opinions were, and  
13 you asked someone -- you're not sure who that was -- to  
14 capture as best they could the opinions -- what your  
15 opinions were because you don't type very well, right?

16 A. If I excise out the technical tutorial and the legal  
17 guidelines, that's essentially correct.

18 Q. And how much of the 959 pages would fall in that  
19 category that you just mentioned?

20 A. Oh, the majority of them for sure, but even there, as  
21 part of the editing process, I could not tell you how much  
22 of that I actually typed.

23 Q. You asked someone to prepare a draft for you based on  
24 your discussions, correct?

25 A. That is correct.

1 Q. Who?

2 A. I asked attorneys at Baker and Botts.

3 Q. So you worked closely with the attorneys in preparing  
4 your report, correct?

5 A. I expressed my opinions to them and asked them to  
6 take -- to make an effort to capture my ideas in the report,  
7 which I would then heavily edit, which I did, because, in  
8 many cases, they didn't quite capture the thought that I had  
9 expressed.

10 Q. So someone at Baker Botts wrote almost all of the  
11 959-page report, and then you edited it, right?

12 A. Again, not quite. Some of those -- some of that  
13 material I wrote myself, first draft, and some of that  
14 material was actually given to me that I didn't edit at all,  
15 the legal guidelines.

16 For the rest of the report, by and large, your  
17 characterization is correct. Somebody else typed the first  
18 draft, which I then heavily edited.

19 Q. There are a lot of words and paragraphs and full  
20 sentences in the report, which will have been written by  
21 Baker Botts, but, of course, you read them and affirmed that  
22 you agreed with them and signed the report, correct?

23 A. No. I edited them -- I have no -- there was some  
24 sentences that did not require editing, if that's what  
25 you're asking --

1 Q. Yes.

2 A. -- which I did read and eventually signed. And this  
3 didn't happen once. This went through several iterations.

4 Q. So it wasn't like you were getting on the phone and  
5 dictating to someone on other end of the line, here are my  
6 opinions, because it would take a quite a lot of time to  
7 dictate 8- or 900 pages over the phone, wouldn't it?

8 A. It wasn't dictation of something that I composed asking  
9 for somebody to merely type. I expressed my opinions, and  
10 then I asked somebody to try to capture those opinions.  
11 I did not dictate.

12 Q. So you expressed your general opinions, and then someone  
13 fleshed out the details, sent you hundreds of pages of  
14 materials, which you then edited and signed your name to,  
15 correct?

16 A. No.

17 Q. You signed your -- you signed the report, right?

18 A. Eventually.

19 Q. And when you gave your opinions, were they as detailed  
20 as what you got back in the report, or was there additional  
21 information in the report that you had not expressed in your  
22 phone calls?

23 A. Well, again, we -- excluding tutorial materials and  
24 legal guidelines?

25 Q. Yes. The bulk of the report, the opinions in this case

1 that you're -- that you are providing to try to kill  
2 Dr. Jorgensen's patents.

3 A. Well, the -- the opinions that I expressed in the report  
4 are my own. You were asking, I think, about the level of  
5 detail of the conversations. They were quite detailed.

6 Q. But they didn't include everything in the 900 pages of  
7 opinions in this report, correct?

8 A. Well, as part of the editing process, I believe I added  
9 some material, if that's what you're asking me.

10 Q. It's normal in patent litigation for the lawyers to  
11 coordinate closely with experts in drafting the report,  
12 isn't it?

13 A. I don't know if it's normal. Many, if not most of them  
14 that I've been involved in, that has been the case.

15 Q. Well, in your case, you provided your general opinions  
16 to the lawyers, who send you back the report with a fully  
17 fleshed out written document, right?

18 A. They were more than general opinions. They were quite  
19 specific opinions.

20 Q. Specific opinions, but how long -- how long do you  
21 suppose it would take to read all of this over the phone?

22 A. I'm not sure I understand the question.

23 Q. Well, it's not like you took -- you had a series of  
24 phone calls where you told them all of your opinions in  
25 here. This is so detailed. That's not possible, is it?

1 A. Well, I didn't -- I didn't read from the script over the  
2 phone. We had discussions where I was explaining the prior  
3 art to them, expressing where I believe the limitations were  
4 found, expressing in detail what my opinions were concerning  
5 a particular reference, and then somebody tried to capture  
6 those lengthy phone calls in a manuscript.

7 I then received that manuscript and spent a couple  
8 of days editing it. It went back -- went back, was heavily  
9 redlined, change this, change this, change this. I got a  
10 second draft, I went through that in detail, and this  
11 process continued several times.

12 Q. But in any case, you certainly don't believe there's  
13 anything wrong in sharing drafts with the lawyers and making  
14 comments in the editing process you just described, right?

15 A. I don't see anything wrong with that.

16 Q. And it will be wrong for anyone to suggest that an  
17 expert for the Plaintiff who was involved in that kind of  
18 process had done anything wrong. Same process you followed,  
19 right?

20 A. Well, I can't comment on that. I know the process I  
21 followed. I don't believe there's anything wrong.

22 Q. Okay.

23 A. I don't know the process that any other witness may have  
24 followed.

25 Q. Now, you know the process well because you've been an

1 expert witness many times, correct?

2 A. I have been an expert witness many times. The process  
3 is not always the same, but I know the process that I  
4 described to you well, yes.

5 Q. You have 34 cases listed in which you've provided  
6 deposition or trial testimony in your report, correct --  
7 list in your report?

8 A. Over the past seven years, that's correct.

9 Q. 34 cases over the last seven years, so it's about five  
10 cases a year, right?

11 A. That's the division, yes, not equally spread out.

12 Q. Right. So you're in deposition or trial testifying in  
13 patent cases every two and a half months, something like  
14 that?

15 A. On average.

16 Q. You generally represent Defendants, correct?

17 A. Not exclusively, but most of the matters that -- listed  
18 on that particular part of my CV were on behalf of  
19 Defendants, that's correct.

20 Q. Right. And when you say the particular part of the CV,  
21 that's the section that is required by the rules that you  
22 must disclose, the work that you've done for at least the  
23 last five years, correct?

24 A. Yeah, list of prior testimony. My list happens to go  
25 back seven years.

1 Q. Now, you testified yesterday that the task of  
2 considering whether a patent is valid or invalid is not  
3 something that you take lightly, correct?

4 A. That's correct.

5 Q. You said you wouldn't want your property taken away,  
6 you'd want to be sure -- want to make sure that you've done  
7 a thorough job before giving an invalidity opinion, right?

8 A. I'm not sure I said it quite that way, but I -- but  
9 some -- something to that effect, yes.

10 Q. And you agree with that statement, right?

11 A. Well, except for the use of the word "sure," as in  
12 certainty. I think you asked me earlier, the -- the  
13 standard is clear and convincing evidence, not absolute  
14 certainty.

15 Q. Okay. One of the things that you have to do in making  
16 clear to yourself that the patent is invalid is to do a  
17 thorough review of the file history, right?

18 A. Well, I did review the file history, if that's what  
19 you're asking.

20 Q. I'm asking you whether it would be unfair to render an  
21 opinion that a patent is invalid without first doing a  
22 thorough review of the file history; isn't that right?

23 A. Yes, at least the portion where there was some dialog  
24 between the applicant for the patent and the Patent Office,  
25 the so-called Office Actions. Yes, I would like to -- I

1 would like to know what -- what the nature of that exchange  
2 was --

3 Q. And you'd also --

4 A. -- what representations the inventor made, what  
5 objections the Patent Office made.

6 Q. And that's -- you'd also want to know what prior art the  
7 Patent Office had before it at the time that it issued the  
8 patent, right?

9 A. Well, I'd want to know that, but as I testified  
10 yesterday, that's not something that was paramount in my  
11 mind because my understanding is I was to render an  
12 independent judgment regardless of what the Patent Office  
13 might have considered. If the Patent Office had expressly  
14 discussed a particular reference --

15 THE COURT: Dr. Acampora, you're way past answering  
16 the question. Please wait until you hear the question,  
17 answer the question, and limit your answer to the question  
18 that's asked.

19 Defense counsel is going to get a chance to ask you  
20 additional questions, as you know, after Mr. Black's  
21 finished. So limit your answers to his questions, okay.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Let's proceed.

24 Q. (By Mr. Black) In rendering an invalidity opinion  
25 before a jury, to ask a jury to overturn the decision of the



1 Patent Office to grant a United States patent, it is true  
2 that it is important for an expert, giving such an opinion,  
3 to thoroughly review the file history, correct?

4 A. I believe that it's important to thoroughly review at  
5 least portions of the file history.

6 Q. And those portions would include the list of prior art  
7 that was reviewed by the Patent Office, correct?

8 A. I believe it's important to review that.

9 Q. Yes. And that list is printed right on the face of the  
10 patent, correct?

11 A. It is.

12 Q. Now, you said that you did a review of the file history  
13 of the '629 patent, correct?

14 A. That's correct.

15 Q. And in your report, at Paragraph 190, we have the sum  
16 total of that analysis?

17 MR. BLACK: Could we put that up on the screen?  
18 That's on Page 66.

19 Q. (By Mr. Black) That was your analysis of the  
20 prosecution history of the '629 patent, correct?

21 A. Not completely.

22 Q. That's all you said in your report, right?

23 A. Well --

24 Q. Correct? Yes or no, Dr. Acampora?

25 A. No.

1 Q. Okay. So your report was not complete?

2 A. That's not what I said.

3 Q. The '629 patent is one of the patents on which you've  
4 rendered an opinion of invalidity, correct?

5 A. That's correct.

6 MR. BLACK: Let's go to the slides.

7 Q. (By Mr. Black) Okay. This is -- this is -- on the '629  
8 patent --

9 MR. BLACK: Actually, I'm sorry, pull out the '629  
10 patent. It's the next slide. Sorry. It's the next slide,  
11 Slide 4. Go to Slide 4.

12 Q. (By Mr. Black) Okay. This is the face of the '629  
13 patent, correct?

14 A. That's correct.

15 Q. And right there on the face of the '629 patent is a  
16 reference to Turina, Patent No. 6,031,832, correct?

17 A. It -- it is, but I'm not sure that the cite that you  
18 have enlarged is on the face or on the second page.

19 Q. This is the section of the references cited, which  
20 begins on the first page, flows over to the second page,  
21 correct?

22 A. Yes. It was an extensive list on the second page. The  
23 cite here is part of that extensive list.

24 MR. BLACK: Your Honor, move to strike. It was a  
25 yes or no question.

1 THE COURT: He answered it yes, and that was the  
2 complete answer. The section of his answer beyond "yes,"  
3 I'll strike as nonresponsive.

4 Again, Dr. Acampora, please limit your answers to  
5 the questions that were asked, all right?

6 THE WITNESS: Yes, sir.

7 THE COURT: Let's proceed.

8 MR. BLACK: Yes, Your Honor.

9 Q. (By Mr. Black) Now, in your report you wrote in  
10 Paragraph 171 --

11 MR. BLACK: Let's go to the next slide.

12 Q. (By Mr. Black) -- I have reviewed the common  
13 specification to all the asserted patents, as well as  
14 selected portions of the file history of related patents.

15 Correct?

16 A. Yes.

17 Q. And that included the '629 patent, correct?

18 A. Yes.

19 Q. And you agree that for rendering an opinion in this case  
20 on invalidity, you needed to do a thorough review of the  
21 file history, right?

22 A. Yes.

23 MR. BLACK: Go to the next slide, please?

24 Q. (By Mr. Black) Now, Paragraph 200 of your report, you  
25 describe the Turina patent, 6,031,832, correct?

1 A. Yes.

2 Q. And you said Turina is prior art because it was filed on  
3 November 27th, 1996, correct?

4 A. Correct.

5 Q. And then you wrote: Turina is not art of record during  
6 prosecution, so I am not aware of any facts indicating the  
7 examiner considered Turina during prosecution.

8 That's what you wrote in your original report,  
9 right?

10 A. Yes, it is.

11 Q. Turina was right on the second page of the patent in the  
12 references cited, correct?

13 A. That's correct.

14 Q. Now, on Tuesday of this week in the middle of trial, you  
15 provided a supplemental report to us, correct?

16 A. I did.

17 MR. BLACK: Next slide, please.

18 Q. (By Mr. Black) And what you did is you gave us a  
19 new Paragraph 200 where you struck out that provision  
20 and now claim that you understand that Turina was  
21 considered during prosecution by the Patent Office,  
22 correct?

23 A. That's correct.

24 Q. Had you thoroughly reviewed the file history, you would  
25 have seen that Turina was art of record before the patent

1 examiner, right?

2 A. I did.

3 Q. And your report, though, which you gave to us said that  
4 you didn't know.

5 A. That was an error.

6 Q. You made an error about whether the key prior art  
7 reference in the case, the only one asserted against the  
8 '629 patent as invalidating it, had been known to the Patent  
9 Office before they issued the patent, correct?

10 A. The mistake is in my report, correct.

11 Q. And the only -- and the point that you realized that was  
12 in the middle of this trial, right?

13 A. Realized what? I'm not sure -- I don't understand.

14 Q. When did you realize that this Paragraph 200 was  
15 supposedly mistaken, that you had, in fact, known that  
16 Turina was before the office?

17 A. Several days ago is when I realized that my report, as  
18 originally filed, had a mistake.

19 Q. How many days ago?

20 A. It was Sunday or Monday.

21 Q. And then on Tuesday -- on Tuesday, your lawyers made an  
22 emergency supplemental expert report filing with us to --  
23 to -- to correct this supposed error, correct?

24 A. I don't know if I would characterize it that way.

25 Q. But Tuesday afternoon in the middle of this trial was

1 when we first received this, right?

2 A. I don't know when you received it, but that's probably  
3 right.

4 MR. BLACK: All right. Now, let's go to Slide 13.

5 Q. (By Mr. Black) We had a lot of discussion yesterday  
6 about Forslow. Do you recall that?

7 A. I do.

8 Q. And Forslow was also art of record before the Patent  
9 Office with respect to the '206 patent, correct?

10 A. That's correct.

11 Q. Now, when the Patent Office reviews art, there's a  
12 process for doing that, right?

13 A. I don't know.

14 Q. How many file histories have you read?

15 A. Oh, I've read many file histories.

16 Q. You don't understand the -- the process for submitting  
17 art to the Patent Office to have it reviewed, and the Patent  
18 Office reviews the art?

19 A. I understand the process of submitting art, yes.

20 Q. Right. And that's done through what's called an IDS,  
21 right?

22 A. I believe that's what it's known as.

23 Q. It's an information disclosure statement, correct?

24 A. Yes.

25 Q. And what the Patent Office does is it requests -- or

1 actually, the patentee is under an obligation to provide any  
2 prior art that it's aware of to the Patent Office, correct?

3 A. I don't know if that's correct.

4 Q. Okay. But you do know that it's common for prior art to  
5 be submitted to the Patent Office, correct?

6 A. Yes. I've submitted patents myself, including the  
7 closest art.

8 Q. Right. And when that happens, the Patent Office keeps a  
9 record of it, and that art then gets printed on the face of  
10 the patent, correct?

11 A. That's my understanding, yes.

12 Q. So with respect to the '206 patent, there was an  
13 information disclosure statement, an IDS, correct?

14 A. Yes.

15 MR. BLACK: And I'm going to put up on the ELMO, if  
16 I could?

17 Q. (By Mr. Black) Sorry. I just want to point out that  
18 the -- the prior art is before the Patent Office. I'm just  
19 establishing it's before the Patent Office. We're not going  
20 to go further into what the examiner may have done or not  
21 done, right?

22 A. Was that a question?

23 Q. No. I'm just telling you where -- where we're going  
24 here.

25 So this is --

1 THE COURT: Well, it needs to be a question.

2 MR. BLACK: I -- I understand, Your Honor.

3 Q. (By Mr. Black) This is an information disclosure  
4 statement, correct?

5 A. Yes.

6 Q. And this is in the file history for the '206 patent,  
7 correct?

8 A. I believe so.

9 Q. And right at the top, there's the Forslow reference,  
10 right?

11 A. Yes.

12 Q. And then what the office does with that is they put the  
13 information disclosure statement in the file, correct?

14 A. Yes.

15 Q. And it's in the file history for people to review later,  
16 like you, right?

17 A. Yes.

18 Q. And they make it easy for everybody by printing these  
19 numbers on the face of the patent, correct?

20 A. Well, they appear on the face of the patent.

21 Q. Right. And both Forslow and Turina appear on the face  
22 of the patents which you are asserting should be  
23 invalidated, correct?

24 A. I don't understand the question.

25 Q. Both Turina and Forslow, the two references that



1 yesterday you said should invalidate the patents-in-suit,  
2 were printed on the face or the second page of the patents  
3 that Dr. Jorgensen obtained which you are now opining are  
4 invalid, correct?

5 A. Well, I recall Forslow on the face of the '206 and  
6 Turina on the face of the '629, if that's what you're  
7 asking.

8 Q. Right. Two out of the three patents you're asserting  
9 are invalid, you're asserting that they are invalid over art  
10 that is referenced on the face of the second page of the  
11 patent, right?

12 A. That's correct.

13 Q. Okay. You said that the error on the '629 patent with  
14 respect to Turina was a cut-and-paste error; is that right?

15 A. I don't know how the mistake was made. It may have  
16 been -- it may have been a cut-and-paste error.

17 Q. Was it your cut-and-paste or someone else's  
18 cut-and-paste?

19 A. I don't know.

20 Q. Well, you said cut and paste yesterday. What -- what  
21 was cut and paste?

22 A. Can I explain?

23 Q. On redirect, you can explain.

24 Do you think that it was your error, or do you  
25 think that it was the lawyers who provided the content of

1 the report to you who made the error?

2 A. I don't know.

3 Q. Okay. Do you know who Mr. Turina is?

4 A. The inventor of the '629 patent.

5 Q. He's an employee of -- of Ericsson, right?

6 A. I don't know that today. At the time, perhaps.

7 Q. Did you hear the testimony the other day about

8 Mr. Turina?

9 A. I recall the Turina patent came up for discussion.

10 Q. Okay. Do you -- do you know one way or the other

11 whether Mr. Turina is at Ericsson now?

12 A. I don't know.

13 Q. He was identified as the inventor on the face of the

14 patent, and the patent was assigned to Ericsson, correct?

15 A. That's correct.

16 Q. So at least as of the time that the patent issued, he

17 was at Ericsson.

18 A. It would appear to be the case.

19 Q. Okay. Have you made any attempts to contact him or

20 determine whether he was available to discuss his inventions

21 and work at Ericsson?

22 A. No.

23 Q. The Forslow reference has a filing date of May 29th,

24 1998, correct?

25 A. That sounds right.

1 Q. He was also a -- an Ericsson employee, at least at the  
2 time that he did the work involved in the patent, correct?

3 A. So it would appear.

4 Q. Did you make any attempt to contact him about his  
5 work --

6 A. No.

7 Q. -- for Ericsson?

8 May 29th, 1998, is shortly before -- about six  
9 weeks before the filing of the first provisional application  
10 by Dr. Jorgensen, right?

11 A. Well, it was approximately six weeks before the priority  
12 date of the -- what patent were you asking about?

13 Q. I'm asking about Forslow.

14 A. Yes. So it was six weeks prior to the filing date --  
15 the priority date of the -- I believe it was in the '206  
16 patent. I don't have the timeline in front of me.

17 Q. Now, Forslow, you described as a 2.5G technology, I  
18 believe?

19 A. That's not what I -- that was not my testimony.

20 Q. You referred to 2.5G yesterday, correct?

21 A. GPRS is a 2.5G technology.

22 Q. Right. 2G was just the voice technology, right?

23 A. 2G was intended primarily for plain old circuit switch  
24 telephony.

25 Q. Right. Circuit switch not -- not packet switch, right?

1 A. That's correct.

2 Q. And then between 2G and 3G, they tried to add and did  
3 add the first data service, which was called GPRS, right?

4 A. That is correct.

5 Q. And people commonly call that 2.5G, right?

6 A. Some call it 2G, some call it 2.5G.

7 Q. You had a diagram up yesterday of Forslow. It looked  
8 like this. Remember that?

9 A. I do.

10 Q. And that's from Figure 11 of Forslow, right?

11 A. As I annotated it, yes.

12 Q. Right. And under Figure 11, there's a couple of words  
13 there, BSS, left paren, BSC-BTS's, right paren. Do you see  
14 that?

15 A. Correct.

16 Q. You called that a box yesterday, I think, right?

17 A. I may have, but I would accept that as being a box, yes.

18 Q. You didn't mean to imply that that was a single thing, a  
19 box like the little base station that somebody put on the  
20 table over here a couple times during the trial, right?

21 A. That's correct.

22 Q. Because a BSC and a BTS is a network, isn't it?

23 A. It's the base station system, BSS.

24 Q. And it consists of a base station controller, correct?

25 A. The base station controller is part of the base station

1 system, correct?

2 Q. Plus a large number of base stations usually, correct?

3 A. No, not correct.

4 Q. The base station controller controls numerous base  
5 stations, right?

6 A. Numerous base transceiver systems, the -- the towers  
7 with different radios.

8 Q. Do people call BTS's base stations?

9 A. No. The base station consists of the base transceiver  
10 system, the radio equipment, and the antenna, plus the base  
11 station controller. Those are part of the base station.

12 Q. How many BTS's does a base station controller control?

13 A. I don't know the maximum, but the minimum is 1.

14 Q. And the maximum is several hundred, if not 512, correct?

15 A. I don't know if that's the case.

16 Q. The typical configuration would be a base station  
17 controller and dozens or even hundreds of base stations that  
18 are controlled by it, correct?

19 A. That might be the case.

20 Q. How many base station controllers do you suppose there  
21 are in the state of Texas -- not now -- let me rephrase.

22 During the 2G era, how many base station  
23 controllers do you suppose there were in the state of Texas  
24 for AT&T?

25 A. I don't know if 2G -- if -- if GSM was even deployed in

1 the state of Texas. There were two second generation  
2 standards.

3 Q. Let's assume for the sake of argument that 2G was  
4 deployed in the state of Texas. How many base station  
5 controllers would you have expected to see covering the  
6 state?

7 A. I don't understand the question.

8 Q. If someone wanted to implement 2G in the state of Texas  
9 to provide 2G telephony, mobile telephony to customers, how  
10 many base station controllers would they have to use?

11 A. I don't understand the question.

12 Q. A base station controller controls base stations, right?

13 A. No. A base station controller is a part of the base  
14 station.

15 Q. How many BTS's would it take to cover the state of Texas  
16 in the 2G era?

17 A. I don't understand that question.

18 Q. What's the thing in 2G that communicates wireless voice  
19 to the phone?

20 A. The base station.

21 Q. And is that different from the BTS?

22 A. In GSM, the base -- the BTS is a part of the base  
23 station system. That's true in GSM.

24 Q. In a 2G system, how many base stations would you need to  
25 cover the state of Texas, 1, 5, 10, a hundred, 500? You're

1 an expert. What's your estimate?

2 A. Which 2G system?

3 Q. You pick one. I tell you what, how about the one in the  
4 Forslow patent?

5 A. The GSM system? I don't know.

6 Q. Do you suppose it's more than one?

7 A. I don't know.

8 Q. You don't know whether you could cover the whole state  
9 of Texas with one cell tower and base station?

10 A. I don't know if GSM was deployed in Texas.

11 Q. I'm asking you, let's say you were going to deploy a 2G  
12 system according to Forslow in the state of Texas. How many  
13 base stations would it require?

14 A. I don't know.

15 Q. And -- more than a hundred, right?

16 A. Towers?

17 Q. Base stations.

18 A. I don't -- I don't know.

19 Q. You can't say whether it's more or less than a hundred  
20 base stations to cover Texas?

21 A. I don't know.

22 MR. BLACK: Let's take a look at Slide 17.

23 Q. (By Mr. Black) This is a diagram from the patent,  
24 right?

25 A. Figure 2 from Forslow, that's correct.

1 Q. And you produced a demonstrative with this diagram  
2 during the course of preparing your testimony, correct?

3 A. That's correct.

4 Q. And you showed this to the jury yesterday, right?

5 A. I did.

6 MR. BLACK: Can we go back one slide, please?

7 Q. (By Mr. Black) Now, we've just cut off the -- some  
8 things at the bottom, and I just want to confirm. This is  
9 the configuration that the patent described as being in the  
10 prior art, right?

11 A. That's correct.

12 Q. And on the right, we have the PSTN, correct?

13 A. Yes.

14 Q. And that's the public switch telephone network, right?

15 A. That's correct.

16 Q. That's circuit switch, not packet switch, correct?

17 A. That is correct.

18 Q. And that is connected to an MSC. Do you see that?

19 A. I do.

20 Q. And the MSC is connected to a BSC, correct?

21 A. That's correct.

22 Q. And the BSC is connected to five base stations, right?

23 A. Base transceiver systems.

24 Q. It says BS. You don't think that's a base station?

25 A. That's a base transceiver system.



1 Q. Also known as a base station?

2 A. No. The combination BSC/BS -- BTS is known as a base  
3 station system.

4 Q. Just the cells that say -- I just want -- we have a box  
5 that says BSC on it, right?

6 A. We do.

7 Q. And then we have one, two, three, four, five things that  
8 look like cells, correct?

9 A. That's correct.

10 Q. And each one of those cells has the word "BS" in it?

11 A. That's correct.

12 Q. Is it your testimony that BS doesn't mean base station?

13 A. That's a base transceiver system, as we saw from the  
14 prior slide that you showed me.

15 Q. And -- and your testimony is that's not -- that wasn't  
16 commonly referred to as the base station?

17 A. That was the base transceiver system --

18 Q. Okay.

19 A. -- in -- in GSM.

20 Q. They -- they left the T off the diagram. I guess  
21 they made an error there; is that right?

22 A. Oh, I don't know why Forslow did that. I'm not about to  
23 comment on whether he made a mistake.

24 Q. Okay. So the BSC is shown here connecting to five  
25 different BTS's, cell towers, right?

1 A. Yes.

2 Q. So the BSC is controlling in this example five cell  
3 towers, correct?

4 A. In this example, yes.

5 Q. And these cell towers obviously are not right next to  
6 each other, right?

7 A. That's true.

8 Q. How many cells do you suppose it would have taken to  
9 cover the entire State of Texas during this time frame?

10 A. Several thousand.

11 Q. Several thousand.

12 A. Maybe more --

13 Q. And --

14 A. -- to cover the entire state.

15 Q. Several thousand.

16 And each one would have to be connected to a base  
17 station controller to operate, correct?

18 A. The cell is the footprint of the base transceiver  
19 system.

20 Q. If you wanted to --

21 THE COURT: Gentlemen. Gentlemen, one at a time,  
22 please. Be sure that the other one is finished before you  
23 talk further.

24 Ask the next question, Mr. Black.

25 Q. (By Mr. Black) If you wanted to cover the State of

1 Texas, it would have -- you would have needed several  
2 thousand cells and, therefore, several thousand cell towers,  
3 correct?

4 A. That's correct.

5 Q. And each of those cell towers would have needed to have  
6 a connection to a base station controller, correct?

7 A. One or more base station controllers.

8 Q. Right. And the number of base station controllers is  
9 much smaller than the number of cell towers, correct?

10 A. Well, smaller than. I don't know much smaller than.

11 Q. Well, isn't it true that the typical configuration for  
12 something -- for a network like this, as shown in this  
13 diagram, would have been to have one or two BSC's in Dallas,  
14 one or two BSC's in Houston, at most? Wouldn't you be able  
15 to cover the entire State of Texas with all those thousands  
16 of BS -- BTS's with three, four, five BSC's, right?

17 A. Assuming that GSM even was deployed, then there would  
18 have been some number of BSC's in Dallas.

19 Q. How many would it have taken to cover the whole state in  
20 our example you've given with several thousand BS [sic]  
21 cells?

22 A. I'm not sure I understand the question, but I can try if  
23 you'd like.

24 Q. I just --

25 THE COURT: Either answer the question because you

1 understand it, or tell counsel you don't understand the  
2 question. If you're going to give an answer to the jury,  
3 they're entitled to presume you understood the question, all  
4 right?

5 THE WITNESS: Yes, sir.

6 A. I don't understand the question.

7 Q. (By Mr. Black) We have an exemplary network according  
8 to the prior art shown in Forslow, Figure 2, correct?

9 A. Yes.

10 Q. It shows a BSC, correct?

11 A. Yes.

12 Q. And multiple BSs [sic] which are associated with cells,  
13 correct?

14 A. Base transceiver systems, yes.

15 Q. The number of cells necessary to cover the entire State  
16 of Texas, as you said, would have been several thousands,  
17 correct?

18 A. That's correct.

19 Q. You would only have needed a handful of BSC's to control  
20 all those base stations, right?

21 A. I don't know.

22 Q. The network is centralized so that you would have a BSC  
23 in Dallas, which would control, for instance, a cell tower  
24 here in Marshall, correct?

25 A. It might have been deployed that way if it was deployed.

1 Q. And also to the west, if you have a base station  
2 controller in Dallas, you would have had the base station  
3 controller controlling probably several hundred base  
4 stations spread out around the geographic area of Texas,  
5 right?

6 A. That's possible.

7 Q. And yet you told the jury yesterday that --

8 MR. BLACK: If we go back to the slide. I'm sorry.  
9 Go back to the ELMO.

10 Q. (By Mr. Black) -- that this was just a box.

11 A. In the drawing, correct.

12 Q. Oh, in the drawing. It's a box in the drawing, but it  
13 actually covers a large part of the State of Texas in  
14 reality, correct?

15 A. Hypothetically speaking, possibly.

16 MR. BLACK: So Slide 18.

17 Q. (By Mr. Black) So possibly speaking, the system that  
18 was in that little box that you said was equivalent to the  
19 Jorgensen inventions would look like this.

20 A. Hypothetically speaking, perhaps.

21 Q. Now, the Jorgensen inventions are focused on an  
22 intelligent base station, right?

23 A. I wouldn't characterize them that way.

24 Q. You don't think that the inventions we've been hearing  
25 about during the trial relate to putting intelligence in the

1 base station to allow it to classify packets of different  
2 types and then schedule them over the airwaves?

3 A. I agree with part of what you just said.

4 Q. The base station that Dr. Jorgensen described included a  
5 classifier, right?

6 A. Yes.

7 Q. And the base station that Dr. Jorgensen described  
8 includes a scheduler, right?

9 A. Yes.

10 Q. And he uses reservation algorithm to schedule traffic so  
11 that the different types of traffic can be mixed together  
12 and sent out together over the airwaves, correct?

13 A. Yes.

14 Q. The intelligence in this system is actually in the base  
15 station controller, isn't it?

16 A. That part of the base station, yes.

17 Q. I just want to be clear, the intelligence in the Forslow  
18 system is in the base station controller, correct?

19 A. Yes.

20 Q. All right. Now, you had two types of testimony  
21 yesterday: Anticipation and obviousness. Do you remember  
22 that?

23 A. Yes.

24 Q. And for anticipation, the assertion is that you found  
25 all the elements of the claim in a single reference,

1 correct?

2 A. Yes.

3 Q. But for obviousness, that means that you have to combine  
4 two references to find everything that Dr. Jorgensen  
5 invented in the claims, correct?

6 A. Partially.

7 Q. Well, for anticipation, the task on invalidity is to  
8 make sure, by clear and convincing evidence, that every  
9 element in the claim is found in a single piece of art,  
10 right?

11 A. Yes.

12 Q. So you've got to be -- if you want to show anticipation,  
13 you've got to take a look at Forslow, and you've got to say,  
14 I see in Forslow everything that's in the claim at issue in  
15 the '206 patent, right?

16 A. Yes.

17 Q. And you -- you provided that testimony yesterday with  
18 respect to a number of claims, that they were anticipated.

19 Everything in the claim was found in Forslow,  
20 right?

21 A. Yes.

22 Q. But there were a couple of claims where you couldn't  
23 find everything in Forslow. Claim 140, for instance, right?

24 A. Not true.

25 Q. You ran an obviousness case against Forslow yesterday,

1 didn't you?

2 A. Actually two.

3 Q. Two claims, right.

4 A. Two obviousness opinions.

5 Q. Right. Not an anticipation opinion, though?

6 A. Correct.

7 Q. And you didn't render an anticipation claim against  
8 Claim 140 because you couldn't find -- even you couldn't  
9 find everything in Forslow in Claim 140, right?

10 A. That's correct.

11 Q. Right. I mean, if you could have found everything in  
12 Forslow that's in Claim 140, you would have just told the  
13 jury that, right?

14 A. I would have.

15 Q. Right. So you -- there was something that was missing  
16 from Forslow in Claim 140, right?

17 A. For the purposes of my anticipation analysis, that's  
18 true.

19 Q. Right. And so because you couldn't find everything in  
20 Forslow that's in Claim 140, you had to combine Forslow with  
21 something else, a reference you called Goodman, right?

22 A. That's partially true.

23 Q. Well, that was your opinion yesterday that 140 is  
24 obvious over a combination of two different references,  
25 right?



1 A. That was one of my obviousness opinions regarding  
2 Claim 140.

3 Q. Okay. You also felt that Forslow itself would render  
4 the '206 patent obvious? Is that your assertion?

5 A. I believe that's the case.

6 Q. You're not sure?

7 A. No, I believe that's what I -- I testified -- I did  
8 testify to that effect.

9 Q. Yes or no, do you think Forslow was -- renders the  
10 entire Jorgensen patent, including 140, obvious?

11 A. Yes.

12 Q. Okay. But you agree that there are elements in  
13 Claim 140 which are not found exclusively in Forslow, right?

14 A. Yes.

15 Q. And -- and the elements that are missing have to do with  
16 what we call the air interface, the communication actually  
17 of packets over the air, right?

18 A. That's not correct.

19 Q. What element was missing?

20 A. Can I see the Forslow patent, please?

21 Q. I'm not sure if we have -- do we have it up there for  
22 you? I'm not sure that we do. Well, we'll -- we'll move  
23 on.

24 MR. BLACK: Okay. Thanks.

25 A. It's on the screen.

1 Q. (By Mr. Black) All right. You don't recall.

2 All right. Claim 140 -- I'll try to refresh your  
3 rec -- Claim 140 of the patent refers to uplink -- the  
4 uplink grant process and the reservation. Do you recall  
5 that now?

6 A. Yeah, that's what I thought it did, but --

7 Q. Right.

8 A. -- I wasn't absolutely certain.

9 Q. So Forslow doesn't explicitly -- Forslow describes  
10 packets going to -- from -- from the BSC or the thing we  
11 showed in Dallas out to the base stations all over Texas,  
12 right?

13 A. As you've characterized it, right.

14 Q. Right. Forslow doesn't actually show what happens to  
15 the packets as they go from the base station to the phones,  
16 right?

17 A. That's not correct.

18 Q. It doesn't describe the uplink grant process through  
19 which the base station and the phone coordinate, right?

20 A. Explicitly, correct.

21 Q. Right. And, therefore, you tried to add the Goodman  
22 reference into the mix so that you could combine the two,  
23 right?

24 A. Well, I did that.

25 Q. Yes. And do you know Goodman, by the way? You made

1 some comments about him yesterday.

2 A. I do. He's a former colleague at Bell Labs.

3 Q. Okay. So you took the Forslow reference, which the  
4 Patent Office referenced and had in front of it, and you  
5 combined it with a reference from a former colleague, and  
6 then you said that equals the inventions of Dr. Jorgensen,  
7 right?

8 A. Claim 140.

9 Q. Now, in the '517 patent, you discussed the CPE, correct?

10 A. Yes.

11 Q. And I wasn't clear from the testimony. And if you  
12 could tell us whether you assumed or did not assume that the  
13 CPE could include a mobile phone, a tablet, an LTE hotspot,  
14 and a notebook computer? Which of those were CPE's as far  
15 as -- part of your opinion?

16 A. Can you -- can you repeat the question, please?

17 Q. I -- I will -- I will break it up. That was a -- that  
18 was a long question.

19 You had testimony about CPE's yesterday, right?

20 A. Yes.

21 Q. For purposes of your opinions, did you assume or did you  
22 not assume that the C -- that a notebook computer located in  
23 the home was a CPE?

24 A. I need to listen to that question one more time.

25 Q. Yes. It's a tough one.

1 For purposes of your invalidity --

2 A. Yes.

3 THE COURT: Mr. Black, you don't need to say it's a  
4 tough one.

5 MR. BLACK: I'm sorry, I'm sorry. I -- I  
6 apologize, Your Honor.

7 THE COURT: All right. You're there to ask  
8 questions, not to testify. And he's here to answer  
9 questions.

10 So let's proceed on that basis.

11 MR. BLACK: Understood.

12 Q. (By Mr. Black) You testified yesterday about a CPE,  
13 right?

14 A. I did.

15 Q. You heard the discussion that I had with Dr. Wicker  
16 about a CPE, correct?

17 A. I was here for that.

18 Q. For purposes -- and you're aware that the same  
19 interpretation of the claims has to be used on infringement  
20 and invalidity, correct?

21 A. Yes.

22 Q. Okay. Now, did you assume that a CPE would include --  
23 or could include a notebook computer with a wireless  
24 connection?

25 A. In my testimony yesterday?

1 Q. Not in your testimony. Just tell me what you think. If  
2 a notebook computer is at someone's home and it's connected  
3 to the -- a wireless system, is it a CPE?

4 A. As IV has applied the claims, yes.

5 Q. How about as you have applied the claims? What is your  
6 view, sir?

7 A. I don't believe so.

8 Q. You're not sure?

9 A. As I've applied -- as I've applied the claims? I -- a  
10 proper interpretation of the claims, I don't believe so.

11 Q. On Passas, you said during your direct examination --  
12 I think you said: Don't be fooled by it because it's an  
13 article.

14 Right?

15 A. Something like that.

16 Q. And Passas is not, in fact, a patent, correct?

17 A. Passas is a publication.

18 Q. And by publication, you mean an eight-page article in an  
19 industry journal, right?

20 A. That's correct.

21 MR. BLACK: If you'd pull up Slide 22, please.

22 Q. (By Mr. Black) So the name of Passas is Quality of  
23 Service Oriented Medium Access Control for Wireless ATM  
24 Networks, correct?

25 A. Yes.

1 Q. And we've referred to it as Passas -- the -- the authors  
2 are Nikos Passas, Sarantis Paskalis, and Dimitra -- Dimitra  
3 Vali, and Lazaros Merakos at the University of Athens,  
4 right?

5 A. Yes.

6 Q. And this -- this is an article discussing ongoing  
7 research in the area of wireless ATM networks, right?

8 A. Summarizing research up to that point.

9 Q. Right. Were you here for Dr. Jorgensen's testimony that  
10 he rejected ATM wireless as solution, that's what led him to  
11 the inventions at issue in this case?

12 A. I heard him say that.

13 MR. BLACK: Go to the next slide, please.

14 Q. (By Mr. Black) Now, this was a -- this wireless ATM was  
15 a research project ongoing in Europe, correct?

16 A. That's correct.

17 Q. And it was never commercially deployed in the United  
18 States, right, as far as you know?

19 A. That is correct.

20 Q. In fact, they called it project Magic WAND, right?

21 A. That's -- that's what it was known as, yes.

22 Q. And it turned out that Dr. Jorgensen was right, that ATM  
23 really was not suited for over-the-air transmission on a  
24 commercial scale, correct?

25 A. I would disagree with that.

1 Q. Wireless ATM systems were not deployed as far as you  
2 know, correct?

3 A. That's correct.

4 Q. And you do -- you did know that the name of the project  
5 was the Magic WAND, right?

6 A. Yes. This was a well-known project.

7 MR. BLACK: Next slide, please.

8 Q. (By Mr. Black) And this is a research -- this is a  
9 paper really just describing for folks who read the journal  
10 that there are open issues in the development of wireless  
11 ATM, right?

12 A. That's the setup for the Passas article, yes.

13 Q. And that's true, there were a number of research  
14 activities going on at the time, but the Magic WAND  
15 hadn't been invented yet, right?

16 A. I don't know if I would agree with that  
17 characterization. I would not agree with that  
18 characterization.

19 Q. Well, LTE doesn't use the Magic WAND, right?

20 A. That's correct.

21 Q. And T-Mobile doesn't use the Magic WAND, right?

22 A. That's correct.

23 Q. And Ericsson doesn't use the Magic WAND either, right?

24 A. To the best of my knowledge, that's correct.

25 Q. Thank you?

1 MR. BLACK: Pass the witness.

2 THE COURT: Is there redirect, Mr. Becker?

3 MR. BECKER: Yes, Your Honor, briefly.

4 THE COURT: Let's proceed with the redirect  
5 examination.

6 MR. BECKER: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BECKER:

9 Q. Dr. Acampora, Mr. Black suggested to you that if the  
10 jury invalidates the six claims that are at issue here, that  
11 that will kill the patent for all time. Was that true --  
12 was that suggestion true?

13 A. No.

14 Q. Why not?

15 A. There were other claims in the patent.

16 Q. Do you -- can you tell us off the top of your head about  
17 how many claims are in the '206 patent?

18 A. 150.

19 Q. And this is 6 of those 150 -- about 150 claims?

20 A. That's correct.

21 Q. Will an invalidity ruling by this jury invalidate the --  
22 all of the other claims that are not asserted here?

23 A. No.

24 Q. And with respect to the '629 patent, the asserted claims  
25 are 1 and 4, right?



1 A. Correct.

2 Q. Would an invalidity ruling by this jury invalidate  
3 Claims 2 and 3?

4 A. No.

5 Q. Same question with the '517. What -- do you know what  
6 the asserted claims are for the '517 patent?

7 A. Yes, I -- I -- same answer.

8 Q. Okay. And it -- it actually -- the '517 patent has more  
9 than just the four claims, right?

10 A. That's what I was hesitating over, yes.

11 Q. Do you recall about how many claims that one has?

12 A. I do not.

13 Q. Is it more than four?

14 A. It is.

15 Q. You were asked a couple of questions about base station  
16 deployments. Could you give the jury an overview of what it  
17 would take to actually deploy a system of base stations?

18 A. I'll provide it -- I'll do that at a certain level of  
19 detail.

20           When deploying base stations, the -- there are two  
21 criteria that need to be satisfied. Criteria 1, what we  
22 call penetration. The base stations need to be sited in  
23 such locations that there would not be significant blockage  
24 of the signal. Otherwise, there's an effect called  
25 shadowing. The phone would drop out, even though you're

1 fairly close to the base station, if you're inside of a  
2 building, for example, or the far side of an building.

3 So one needs to site the base stations, determine  
4 the locations so that there's reasonable confidence that the  
5 area intended to be served will be serviceable by at least  
6 one of the base stations. There won't be any blackout  
7 zones.

8 Two, the base stations must be deployed with  
9 sufficient density that there's enough capacity to serve the  
10 expected demand. So more base stations, more capacity.

11 So a combination of these two factors go into the  
12 process of designing the physical deployment of the base  
13 stations. And that's an art in itself.

14 Q. Is that something that someone could do just off the top  
15 of their head?

16 A. Oh, no. There are companies that specialize in this.

17 In fact, I was board advisor back in the day, in  
18 the 2G day, to a company that did this. And at that time,  
19 that company had been involved in the rollout of close to a  
20 third of the nation's cellular service and international  
21 rollouts as well. That's -- that's not an easy thing to do.

22 Q. You were asked some questions about Turina, and I think  
23 you didn't get a chance to explain what the difference is  
24 between a reference that the examiner has expressly  
25 discussed and one that's just listed on the face of the

1 patent.

2           Could you explain what that -- what you were trying  
3 to say there?

4 A. Yes. So when a reference is listed on the face of the  
5 patent, there's an acknowledgment by the examiner that the  
6 examiner was aware of this and considered it, but no  
7 suggestion as to the depth of consideration.

8           As an example, I spent 20 hours reviewing Forslow.  
9 I don't know how much time the examiner spent.

10           Now, within the prosecution history, there's very  
11 often some dialogue between the examiner and the -- the  
12 applicant where a specific reference is discussed.

13           The -- the examiner might say, I think your patent  
14 is invalid because of this prior art. And then the inventor  
15 would respond and maybe modify the claims or convince the  
16 examiner the examiner is wrong.

17           In such a case, there would be, in my opinion, much  
18 more evidence that that particular reference was actually  
19 examined by the patent examiner, much more so than -- in my  
20 opinion, than it was merely listed on the face with no -- no  
21 evidence that there was any greater consideration by the  
22 examiner, other than an acknowledgment that it was there.

23           MR. BECKER: Mr. Patterson, could you pull up the  
24 '629 patent?

25 Q. (By Mr. Becker) Now, you weren't shown the complete

1 front page of the patent during your cross-examination.

2 Is Turina listed on this first page?

3 A. No.

4 Q. Is it listed on the second page?

5 A. I'm looking it over very quickly. I'm not sure that --  
6 I believe it is on the second page, going from memory, but  
7 I'd have -- I'd have to find it. I recollect that it was on  
8 the left column. There it is. Approximately 10 up from the  
9 bottom, there's Turina.

10 Q. About how many references are listed on this page?

11 Just --

12 A. 60 or 70.

13 Q. You don't have to give an exact number.

14 A. 60 or 70.

15 Q. When you looked at the Turina patent, how many times did  
16 you read that patent?

17 A. Two or three times, maybe more.

18 Q. Did you read it closely?

19 A. Very closely.

20 Q. How many hours did you spend reviewing Forslow?

21 A. Approximately 20 hours.

22 Q. How many times did you read Forslow?

23 A. At least three.

24 Q. And did you read it closely?

25 A. I did.

1 MR. BECKER: Mr. Patterson, could you pull up the  
2 '206 patent?

3 Could you show Page 2 of the patent?

4 Q. (By Mr. Becker) Is this a list of -- a partial list of  
5 the references listed on the '206 patent?

6 A. A partial list, yes.

7 MR. BECKER: Can you go to the next page?

8 Q. (By Mr. Becker) Is this more of that list?

9 A. Yes.

10 MR. BECKER: Will you show the next page?

11 Q. (By Mr. Becker) Is this more of that list?

12 A. Yes.

13 MR. BECKER: Can you show the next page?

14 Q. (By Mr. Becker) Is that more of that list?

15 A. Yes.

16 MR. BECKER: Next page, please.

17 A. Yes.

18 Q. (By Mr. Becker) Is that more of that list?

19 A. I believe that's the conclusion of that list.

20 Q. About how many references would you will say that is?

21 A. Several hundred.

22 Q. You were asked some questions about Claim 140 of the  
23 '206 patent.

24 A. Yes.

25 Q. Does -- does Forslow disclose using GPRS system?

1 A. Yes.

2 Q. Does Goodman give the details of using that same GPRS  
3 system?

4 A. Yes.

5 Q. Does an idea -- you were all asked some questions about  
6 the WAND system. Do you recall what that stands for?

7 A. Wireless -- that was the W -- I -- I would be guessing  
8 at the rest of it. The system was widely known by its  
9 acronym.

10 MR. BECKER: It's DX-95. I'm looking at Page 5 of  
11 the exhibit. Sorry, you're on the right page. Could you  
12 pull up the abstract?

13 Q. (By Mr. Becker) Does this refresh your recollection as  
14 to what WAND stands for?

15 A. Wireless ATM network demonstrator. It's -- thank you.  
16 It's here.

17 Q. Thank you. Dr. -- Dr. Acampora, with respect to the  
18 '206 patent, this concept of scheduling and classifying  
19 packets at a base station, did Dr. Jorgensen do that first?

20 A. No.

21 Q. With respect to the '629 patent, this concept of  
22 reserving slots in future frames, did Dr. Jorgenson do that  
23 first?

24 A. No.

25 Q. And with respect to the '517 patent, this idea of

1 allocating a bandwidth between uplink and downlink based on  
2 contents of packets and reservation requests, did  
3 Dr. Jorgensen that first?

4 A. No.

5 MR. BECKER: Pass the witness.

6 THE COURT: Further cross-examination?

7 MR. BLACK: Yes, Your Honor.

8 THE COURT: Please proceed.

9 RECROSS-EXAMINATION

10 BY MR. BLACK:

11 Q. So you -- you testified that if you're successful in  
12 tearing up the claims in this case, that we could just come  
13 back and do it again with some other claims?

14 A. I didn't say that.

15 Q. You're saying that the claims in this case, if they're  
16 found invalid, that we can rely on the other claims in the  
17 patent? Do you have an understanding to that effect?

18 A. I'm not -- I don't understand your question.

19 Q. Do you know whether if there's a finding of invalidity  
20 in this case with respect to the claims that the parties  
21 have selected for trial, whether that would have any impact  
22 on the ability to enforce other claims in the patent?

23 A. I don't have any awareness of that, I'm sorry.

24 Q. Right. That's a legal issue, right?

25 A. I don't even know that. I just have no reason to

1 believe that anything other than these claims are at issue.

2 Q. Right. You're -- you're not an expert on the impact of  
3 an invalidity finding, correct?

4 A. I would not call myself an expert on that, no.

5 Q. Okay. But we do know that it would tear up the ones  
6 that Ericsson and T-Mobile are using to make all the money  
7 that's at issue in this case, right?

8 A. I don't know that at all.

9 Q. You don't think if all the claims are invalid, that that  
10 would end the case?

11 A. That's a different question. That -- that, the answer  
12 is yes.

13 Q. So there are three patents at issue in this case, right?

14 A. Yes.

15 Q. And one of them was examined by one examiner, one of  
16 them was examined by two examiners, and the third was  
17 examined by another examiner, right?

18 A. That's my recollection.

19 Q. So we have four different examiners that looked at these  
20 patents, right?

21 A. Not all of the patents.

22 Q. Right. There was one examiner on one patent, two  
23 examiners on the second patent, and one examiner on the  
24 third patent. One plus two plus one equals four, right?

25 A. Yes, on -- over the three patents, correct.



1 Q. And you disagree with all of them, correct?

2 A. In my opinion, the asserted claims were invalid, if  
3 that's what you mean by disagree.

4 Q. Let's take a look at Forslow.

5 MR. BLACK: If I could just have the ELMO.

6 Q. (By Mr. Black) So we had a lengthy debate over this  
7 diagram, Figure 2, about what was in the cell with the  
8 letters BS. Do you see that?

9 A. Yes.

10 Q. And -- and you contended that BS was not a base station  
11 but a BTS, correct?

12 A. That's a base transceiver system from GSM, yes.

13 Q. Okay. And you wouldn't call that a base station?

14 A. That's part of a base station.

15 Q. I have the text here from Forslow that my colleague  
16 pulled.

17 MR. BLACK: If we could -- maybe it'd be better to  
18 pull it up on the -- on the main monitor. It's Column 2 of  
19 Forslow. Right there. Second paragraph. There you go.

20 Q. (By Mr. Black) So we were just looking at Figure 2,  
21 right?

22 A. We were.

23 Q. And it says: Figure 2 shows a more detailed mobile  
24 communication system using the example GSM mobile  
25 communications model that supports both circuit-switched and

1 packet-switched communications.

2 Do you see that?

3 A. I do.

4 Q. And then it says: A mobile host 12, including a  
5 computer terminal and mobile radio, communicates over radio  
6 interface with one or more base stations, BSs.

7 Correct?

8 A. I see that.

9 Q. So the way Forslow was referring to Figure 2 and the BS  
10 there was as a base station, right?

11 A. Partially correct, because the paragraph goes on.

12 Q. Well, the definition for the BS is base stations, right?

13 A. As is used in this passage, that's what it says.

14 Q. And this is a passage in the Forslow patent relating to  
15 the description of Figure 2, correct?

16 A. That's correct.

17 Q. And Forslow was an Ericsson employee, right?

18 A. I believe so at that time.

19 Q. And then he wrote: Each base station is located in a  
20 corresponding cell.

21 Do you see that?

22 A. I do.

23 Q. And that's exactly what I was asking you about before.  
24 Each cell has a base station, right?

25 A. A base transceiver system.

1 Q. But he called it a base station, didn't he?

2 A. Here --

3 Q. He is --

4 A. -- in the context of GSM.

5 Q. Which is the context of the Forslow patent, right?

6 A. Well, GPRS on top of GSM is the context of the Forslow  
7 patent.

8 Q. Let's just agree on one thing if we can. The letters BS  
9 in the block on Figure 2, to Forslow, in this reference,  
10 would you say invalidates Dr. Jorgensen's invention? Those  
11 letters mean base station, right?

12 A. That's how they were characterized in this -- this part  
13 of Forslow.

14 Q. And then in the next sentence, it says: Multiple base  
15 stations are connected to a base station controller, left  
16 paren, BSC, right paren.

17 Do you see that?

18 A. That's correct?

19 Q. He's abbreviating the term "base station controller" to  
20 BSC, right?

21 A. That, he is.

22 Q. And that's exactly what I was asking you about before.  
23 And when I put the diagram up of the state of Texas, you  
24 have a BSC that communicates to multiple cells, right?

25 A. That's correct.

1 Q. And each cell has a base station in it, correct?

2 A. The base transceiver system.

3 MR. BLACK: No further questions.

4 THE COURT: You pass the witness?

5 MR. BLACK: Pass the witness.

6 THE COURT: Is there further redirect, Mr. Becker?

7 MR. BECKER: Briefly.

8 THE COURT: Proceed.

9 REDIRECT EXAMINATION

10 BY MR. BECKER:

11 Q. Dr. Acampora, IV's counsel asked you some questions  
12 about tearing up Dr. Jorgensen's patent. Did you -- do you  
13 recall those questions?

14 A. Yes.

15 Q. Were you here when Dr. Jorgensen testified that he has  
16 no interest in these patents?

17 A. Yes.

18 MR. BECKER: No further questions.

19 THE COURT: Any further cross?

20 MR. BLACK: One, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. BLACK:

23 Q. As an inventor, man who is issued three patents by the  
24 United States Patent Office, do you think he would have an  
25 interest -- personal interest in making sure that those

1 inventions continued to be recognized, just as you would  
2 with respect to your patents?

3 A. You asked about me, if my patents were invalid, then  
4 they should be declared invalid.

5 Q. You'd have --

6 A. If they're not invalid, then they should not be declared  
7 invalid.

8 Q. But you'd certainly be rooting for validity,  
9 wouldn't you?

10 A. I don't know.

11 MR. BLACK: Pass the witness.

12 THE COURT: Further redirect?

13 MR. BECKER: No, Your Honor.

14 THE COURT: You may step down, Dr. Acampora.

15 Should this witness be retained, or may he be  
16 released?

17 MR. BECKER: He may be released, Your Honor.

18 THE COURT: Any objection from Plaintiff?

19 MR. BLACK: No objection.

20 THE COURT: Dr. Acampora, you have been released by  
21 the Court. You're free to stay; you're free to leave.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Defendants, call your next witness.

24 MR. RUBENSTEIN: Defendants call Ms. Evelyn Chen.

25 THE COURT: Ms. Chen, if you'll come forward.

1 (Witness sworn.)

2 THE COURT: Please come around, and have a seat on  
3 the witness stand.

4 Ladies and gentlemen of the jury, before the  
5 examination of this witness begins, I want to mention to you  
6 that even though in my preliminary instructions I told you  
7 that witnesses were either called live, or if they couldn't  
8 be live to testify in person, they were presented through a  
9 deposition. I remind you, Ms. Chen has already testified in  
10 this case by deposition, which has been shown to you  
11 earlier, and she's also testifying live in this case.

12 This is a bit unusual. This is done pursuant to an  
13 agreement between the parties. It doesn't concern the jury.

14 But I don't want the fact that you've seen her  
15 deposition and now you're hearing her live to be confusing  
16 to you in any way, all right.

17 Let's proceed, Mr. Rubenstein.

18 MR. RUBENSTEIN: Thank you, Your Honor.

19 EVELYN CHEN, DEFENDANTS' WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MR. RUBENSTEIN:

22 Q. Good morning, Ms. Chen.

23 A. Good morning.

24 Q. Would you please introduce yourself to the Court and the  
25 jury.

1 A. Sure. Hi. My name is Evelyn Chen.

2 Q. Where are you from, Ms. Chen?

3 A. I currently live in Plano with my husband, but I grew  
4 in Katy outside of Houston.

5 Q. And do you still have family down toward Houston?

6 A. I do. My parents, my brother, and my in-laws.

7 Q. Ms. Chen, would you please describe for us your  
8 educational background starting with college.

9 A. Sure. I attended UT Austin, got my bachelor's there in  
10 electrical engineering in 2001, worked for two years in  
11 Austin helping inventors get patents to protect their  
12 inventions and then went back to UT Austin for law school  
13 and graduated from there in 2006.

14 Q. And what did you do after graduating from law school?

15 A. I moved up to Dallas. I worked for a law firm there for  
16 a few years and then spent two years out in Texarkana  
17 working for a judge before moving back to Dallas to go back  
18 to my old law firm.

19 Q. And for whom do you work now, Ms. Chen?

20 A. Ericsson.

21 Q. When did you start working at Ericsson?

22 A. A little over five years ago, November 2013.

23 Q. Why is it that you came to work at Ericsson?

24 A. A good friend of mine from school was at Ericsson, and  
25 he has always loved his job there and loved working there,

1 and when this opportunity came up, he called me.

2 I had been familiar with Ericsson because they've  
3 always kind of been on the forefront of telecommunications.  
4 And this felt like a good opportunity to be able to use both  
5 my engineering degree, as well as my law degree, and so I  
6 decided to give it a try.

7 Q. And what's your current position at Ericsson?

8 A. Senior counsel.

9 Q. And for how long have you been in that role?

10 A. Since I started, so over five years.

11 Q. And what's the name of the group that you work in?

12 A. Intellectual property rights and licensing. We usually  
13 call it IPR and licensing for short.

14 Q. And does your work and the work of this group include  
15 patents?

16 A. It's mainly patents.

17 Q. Could you please tell us a little bit about your job,  
18 maybe give everybody an idea of what you do on a day-to-day  
19 basis?

20 A. Sure. Generally, my job deals with licensing Ericsson's  
21 portfolio. A lot of it's focused on our patent portfolios  
22 that are essential to LTE, the LTE portfolio. And I meet  
23 with potential licensees to discuss Ericsson's patents and  
24 support those activities.

25 Q. Now, with respect to those licensing discussions, how



1 many of those have you participated in or been associated  
2 with in some capacity at Ericsson?

3 A. I think over a dozen.

4 Q. Now, how many patents does Ericsson have?

5 A. Over 45,000 right now.

6 Q. And is that worldwide?

7 A. Yes, sir.

8 Q. How about in the United States?

9 A. I think around 13,000.

10 Q. Does Ericsson license its patents?

11 A. Certainly.

12 Q. Why?

13 A. Well, we've invested a lot in research and development,  
14 and we have gotten patents to protect those innovations, and  
15 as much of the technology is practiced or used by standards  
16 that a lot of companies are implementing in their products,  
17 we think it's only fair that they give us a fair royalty for  
18 our technology that we developed that they're using.

19 Q. Now, Ms. Chen, have you heard of something called a  
20 claim chart?

21 A. Yes, sir.

22 Q. What are claim charts?

23 A. Claim charts are documents that compare a claim in a  
24 patent against a product, or in Ericsson's case, a lot of  
25 times the standard to show how this standard uses and

1 matches up with the languages in the claims.

2 And so it's an easier way to show somebody how this  
3 technology, this standardized technology is using the  
4 invention that is claimed in the patent.

5 Q. Does Ericsson exchange claim charts during licensing  
6 negotiations?

7 A. Yes, sir.

8 Q. Why?

9 A. It's a way to be able to show a potential licensee  
10 that they -- to demonstrate to them how they might be  
11 infringing or using Ericsson's technology. This way they  
12 don't have to just take our word for it when we reach out  
13 and tell them, hey, you're using our patents; we can show  
14 them.

15 Q. And does it give the other party some idea of what's in  
16 the portfolio?

17 A. Yes, it gives them some idea.

18 Q. Does Ericsson prepare claim charts for each specific  
19 licensing negotiation in which it participates?

20 A. No.

21 Q. Why not?

22 A. Well, especially for standardized technologies. We are  
23 comparing or showing how our patents are used by the  
24 standard, and so we already have these claim charts prepared  
25 as compared to the standard. So when we are discussing with

1 a company about their use of the standard in our technology,  
2 we already have these ready to show them.

3 Q. So are you saying that these claim charts are -- are  
4 prepared independent of any particular negotiation?

5 A. Yes, sir.

6 Q. And so after preparing claim charts, what does Ericsson  
7 do with them?

8 A. Well, they're collected and gathered and stored with  
9 other claim charts reading on that particular technology,  
10 and when we start engaging in a licensing negotiation and we  
11 need to share them with the other party, we pull them out  
12 and send them over.

13 THE COURT: Ms. Chen, would you slow down just a  
14 little bit, please?

15 THE WITNESS: Yes, sir. I'm sorry, Your Honor.

16 THE COURT: No problem.

17 Let's continue.

18 Q. (By Mr. Rubenstein) Now, Ms. Chen, you have mentioned  
19 that -- that Ericsson sends claim charts to potential  
20 licensees to -- to show examples of Ericsson's patents.  
21 What do you mean by examples?

22 A. Just that. They're examples. They're -- not that we  
23 don't send over the entire portfolio, but it's just to give  
24 them a feel for some of the technologies that are covered by  
25 our patents.

1 Q. How many claim charts does a potential licensee receive  
2 from Ericsson during a patent license negotiation?

3 A. It depends. It depends on the company we're discussing  
4 with. Some might only want to see a couple or none at all.  
5 Others say they want to see all the claim charts that we  
6 hold at that particular point in time. I think in the past  
7 year, there have been some where we've sent over 150.

8 Q. So is it different every time?

9 A. Yes, sir.

10 Q. All right. Now, Ms. Chen, the jury has heard a bit  
11 during the course of this trial about a patent license  
12 negotiation between Ericsson and ZTE that resulted in a  
13 license back in 2014. Are you familiar with that  
14 negotiation?

15 A. Yes, sir.

16 Q. How are you familiar with it?

17 A. I participated in some of the technical discussions and  
18 business discussions with ZTE.

19 Q. And during the negotiation, do you know whether Ericsson  
20 sent ZTE claim charts?

21 A. We did.

22 Q. And for how many U.S. patents did Ericsson send ZTE  
23 claim charts?

24 A. For infrastructure, I think about 18.

25 Q. And were there other non-U.S. patents that were --

1 charts that were sent?

2 A. Yes, sir.

3 Q. Did Ericsson send ZTE anything other than those claim  
4 charts?

5 A. Yes, sir.

6 MR. RUBENSTEIN: Mr. Patterson, would you please  
7 put up DX-529.

8 Q. (By Mr. Rubenstein) Ms. Chen, do you recognize this  
9 document?

10 A. Yes, sir, I do.

11 Q. What is it?

12 A. It is a list of example infrastructure patents owned by  
13 Ericsson that are essential for practicing the LTE standard.

14 Q. And is this -- is this one of the documents that was  
15 sent to ZTE during the negotiations?

16 A. Yes, sir.

17 Q. And how do we know that these are just examples and not  
18 an exhaustive list?

19 A. Well, the title says they're examples.

20 Q. Why did Ericsson send this additional list to ZTE?

21 A. This is a typical list that we would share with  
22 potential licensees, just to show them, in addition to the  
23 claim charts, that we have more patents that would pertain  
24 to their technology that they're using.

25 Q. Were the 18 -- were the charts for the 18 U.S. patents

1 and the additional ones that appear on -- on this list, on  
2 DX-529, an exhaustive list of infrastructure patents that  
3 Ericsson had?

4 A. No.

5 Q. Now, during the --

6 THE COURT: Just a minute. Whose phone is  
7 sounding? I'm hearing some device ring.

8 UNIDENTIFIED PERSON: I'm sorry, that was my watch.

9 THE COURT: That was your watch? Everything we  
10 wear today makes noise. Whatever it is, silence it. I  
11 don't want any more interruptions or disruptions of the  
12 trial.

13 Continue, counsel.

14 MR. RUBENSTEIN: Thank you, Your Honor.

15 Q. (By Mr. Rubenstein) During the license -- licensing  
16 discussions with ZTE, did Ericsson ever do any kind of  
17 relative valuation between a subset of its patents compared  
18 to a subset of ZTE's patents?

19 A. No, sir.

20 Q. And based on your knowledge of Ericsson's licensing  
21 discussions with ZTE, did Ericsson ever tell ZTE that the  
22 value in Ericsson's entire LTE portfolio of standard  
23 essential patents was found only in those 18 U.S. patents  
24 for which claim charts were sent?

25 A. No, sir.

1 Q. Why not?

2 A. We wouldn't have done that because it's not true.

3 Q. Why isn't it true?

4 A. One, our LTE portfolio contains many patents, more than  
5 just those 18 U.S. patents as was shown -- both the list  
6 that we sent them in this list, as well as the other claim  
7 charted patents that we sent them.

8 Q. And is the -- is the value of Ericsson's portfolio found  
9 just in a small group of patents?

10 A. No, sir.

11 Q. Is it found in the whole of the portfolio?

12 A. Yes, sir.

13 Q. Based on your knowledge of Ericsson's patent licensing  
14 efforts, has Ericsson ever told any potential licensee that  
15 the value of its entire LTE standard essential portfolio was  
16 found only in a few example patents?

17 A. No, sir.

18 Q. Ms. Chen, do you understand the word "exemplary" to have  
19 a different meaning in the context of Ericsson's patent  
20 license negotiations than it does from the word's ordinary  
21 meaning?

22 A. No, sir.

23 Q. And if the 18 patents that Ericsson sent to ZTE were  
24 supposed to be representative of the breadth of technology  
25 in Ericsson's portfolio, does that mean that the other

1 patents in Ericsson's portfolio are just duplicative of the  
2 18 that were sent?

3 A. No, sir.

4 Q. Why not?

5 A. These were meant to be -- or claim charted patents are  
6 meant to be examples. Ericsson is a leader in LTE  
7 technology -- development and technology. We have many  
8 patents that cover many different aspects of the standard  
9 that are not shown -- will not be demonstrated or covered by  
10 those 18 U.S. patents.

11 Q. Thank you, Ms. Chen.

12 MR. RUBENSTEIN: I pass the witness.

13 THE COURT: Cross-examination?

14 MS. HENRY: Yes, Your Honor.

15 THE COURT: Proceed when you're ready, Ms. Henry.

16 MS. HENRY: Your Honor, may I approach and provide  
17 the witness a binder, please?

18 THE COURT: You may.

19 CROSS-EXAMINATION

20 BY MS. HENRY:

21 Q. Good morning, Ms. Chen.

22 A. Good morning.

23 Q. You and I have met before, haven't we?

24 A. Yes, ma'am.

25 Q. In fact, we've known each other for a number of years



1 and long before anything having to do with this lawsuit,  
2 right?

3 A. That's right.

4 Q. We've never been in this situation, though, have we?

5 A. No.

6 Q. Well, it's -- it's lovely to see you again regardless of  
7 the situation.

8 I'd like to talk to you a little bit about the ZTE  
9 claim charts, okay?

10 A. Sure.

11 Q. So earlier, when you were -- when you were talking with  
12 Mr. Rubenstein, you pulled up DTX-529.

13 MS. HENRY: Mr. Horseman, could I get DTX-529,  
14 please?

15 Q. (By Ms. Henry) Now, DTX-529 is a list of patents that  
16 Ericsson provided to ZTE as part of the negotiations,  
17 correct?

18 A. Yes, ma'am.

19 Q. It is not the claim charts that Ericsson provided ZTE,  
20 correct?

21 A. Correct.

22 Q. Okay. And -- and you pointed out that on this, on  
23 DTX-529, it says examples of Ericsson's patents, correct?

24 A. Yes, ma'am.

25 Q. But the word "example" is not the word that ZTE uses

1 when it's describing its claim charts that are provided to  
2 potential licensees, right?

3 A. I'm sorry, did you say that ZTE uses?

4 Q. I'm sorry. The word "examples" is not the word that  
5 Ericsson uses when it provides claim charts to potential  
6 licensees?

7 A. Correct. They're claim charts.

8 Q. Yes. And they don't use the word "examples" when  
9 they're describing those claim charts, correct?

10 A. No, ma'am.

11 Q. And, Ms. Chen, you gave some deposition testimony in  
12 this case, correct?

13 A. Yes, ma'am.

14 Q. Okay. And as -- at that deposition, Ericsson designated  
15 you to speak on its behalf with respect to its licensing  
16 practices, correct?

17 A. Yes, ma'am.

18 Q. And you were asked several questions about Ericsson's  
19 licensing practices, correct?

20 A. Correct.

21 Q. And I want to be really clear, you weren't the one who  
22 chose the claim charts to send to ZTE, right?

23 A. Correct.

24 Q. Okay. But you testified generally about what goes into,  
25 in general, the decision of choosing representative claim

1 charts; is that fair?

2 A. Yes.

3 Q. Okay. And someone, though, at Ericsson chose those 18  
4 claim charts to provide to ZTE, correct?

5 A. For those 18 U.S. patents, yes.

6 Q. Yes.

7 A. Uh-huh.

8 Q. And do you know who that was?

9 A. I'm not sure.

10 Q. Okay. But -- but regardless whoever that was isn't  
11 going to come here and testify today, correct?

12 A. He's no longer with the company.

13 Q. Thank you.

14 Now, we have testimony in the record about how  
15 Ericsson conducts its licensing negotiations, right?

16 A. Yes. Yeah, from my deposition. Yes.

17 Q. Yes. Some of that testimony comes from you, correct?

18 A. Sure, yes.

19 Q. Yes. And isn't it true that the claim charts that are  
20 chosen by Ericsson to use in its licensing negotiations are  
21 chosen to show the breadth of Ericsson's patent holding in  
22 the particular standard, correct?

23 A. Yes, correct.

24 Q. And isn't it also true that Ericsson sends claim charts  
25 to potential licensees so that the licensee will have some

1 comfort regarding exactly what is -- it is Ericsson says it  
2 owns?

3 A. Yes.

4 Q. And are you aware, Ms. Chen, of whether or not  
5 Ericsson -- other Ericsson employees have provided sworn  
6 testimony describing these types of claim charts?

7 A. In this case?

8 Q. Are you aware that -- whether or not Ericsson employees  
9 have provided sworn testimony in this case or other cases  
10 describing generally what these types of claim charts are?

11 A. It's very likely.

12 Q. Okay. And you're aware that when Ericsson employees are  
13 describing the claim charts that are used in negotiations,  
14 they refer to them as representative claim charts, correct?

15 A. That sounds reasonable.

16 Q. Okay. And you're aware that when Ericsson employees  
17 have provided sworn statements about these claim charts,  
18 that they state that the exchange of such representative  
19 claim charts is typical in negotiations for portfolio-wide  
20 licenses?

21 A. That sounds like a reasonable statement.

22 Q. And that word "representative" is a word that comes from  
23 Ericsson's sworn witness statements, right?

24 A. I'll take your word for it. I'm not sure who you might  
25 be referring to.

1 Q. All right. Well, I'll -- I'll be happy to refresh your  
2 recollection.

3 MS. HENRY: Your Honor, may I approach the witness?

4 MR. RUBENSTEIN: Your Honor, may we approach,  
5 please?

6 THE COURT: Approach the bench.

7 (Bench conference.)

8 MR. RUBENSTEIN: I just have some concern about  
9 this document because it was one of the ones that was  
10 subject to some discussion in our pre-trial conference and  
11 was not -- and was excluded from the record and from the  
12 exhibit list.

13 I just have some concern about how this document  
14 is being used and what -- what could be read aloud to the  
15 jury from it and what is being said from this document and  
16 how it's being characterized to the jury for all the reasons  
17 we discussed.

18 THE COURT: Tell me how you intend to use this, Ms.  
19 --

20 MS. HENRY: Your Honor, I intend to use a very  
21 limited portion of this to refresh Ms. Chen's recollection.  
22 And unless she contradicts it, I do not intend at all to  
23 play it or have it read to the jury.

24 THE COURT: All right. Then you should be sure not  
25 to reveal the heading or the origin of it as coming from

1 that other litigation.

2 MS. HENRY: Certainly, Your Honor.

3 THE COURT: All right. Let's proceed.

4 MR. RUBENSTEIN: Thank you, Your Honor.

5 MS. HENRY: Thank you, Your Honor.

6 (Bench conference concluded.)

7 MS. HENRY: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. (By Ms. Henry) Ms. Chen, can you please go -- there's a  
10 tab on the document that I just provided you. Could you  
11 please read Lines 6 through 11 on Page 5 of that document,  
12 and tell me if it refreshes your recollection of whether or  
13 not Ericsson employees have provided sworn statements  
14 referring to claim charts used in negotiations as, quote,  
15 representative.

16 A. Did you want me to read this out loud or --

17 Q. No, no, no. Please just read it to yourself, and see if  
18 it refreshes your recollection.

19 A. Okay. Yes, it appears he has.

20 Q. Thank you.

21 And, Ms. Chen, are you aware that other Ericsson  
22 employees, under oath, have said that during licensing  
23 negotiations, Ericsson presents claim charts to the  
24 prospective licensee showing how a representative sample of  
25 Ericsson's patents are essential to the standard?

1 A. That sounds reasonable.

2 Q. Okay. And also the use of the term representative  
3 there, correct?

4 A. Correct.

5 Q. Correct.

6 So if someone was to suggest that the term  
7 representative was coined by IV as opposed to Ericsson, that  
8 would be incorrect, wouldn't it?

9 A. I think it's a common word, so I would say so.

10 Q. And -- and the word representative claim charts is  
11 different from the example patents that Mr. Rubenstein put  
12 on the screen, correct?

13 A. Well, one is a list of patents, and the other are claim  
14 charts, so I guess yes.

15 Q. That's correct.

16 And the list of patents says these are examples of  
17 patents, correct?

18 A. Correct.

19 Q. That's what you and Mr. Rubenstein discussed earlier,  
20 correct?

21 A. Correct.

22 Q. But the word example is not the word that Ericsson  
23 employees use when they're referring to actual claim charts  
24 that are provided, correct?

25 A. Sometimes they're referred to as exemplary, but not in,

1 I guess, the discussion we just had.

2 Q. Yes. In the sworn statements of Ericsson employees made  
3 under the penalty of perjury, they're referred to as  
4 representative claim charts; isn't that correct?

5 A. I think, yes, it's been referred to that way.

6 Q. And Mr. Rubenstein also mentioned with you that included  
7 in those claim charts provided to ZTE were some foreign  
8 patent -- patents. Do you recall that?

9 A. Yes.

10 Q. Okay. Now, if you were negotiating a U.S. only license,  
11 would it matter what foreign patents that company had?

12 A. Are you asking in the abstract or with respect to  
13 Ericsson?

14 Q. Well, either with respect to Ericsson or in the  
15 abstract, either way.

16 A. Well, with respect to Ericsson, we only do global patent  
17 licenses, which is why I asked, because we would never  
18 discuss a patent license of Ericsson's patents for just the  
19 U.S., but in the abstract, if we're talking about just  
20 licensing U.S. patents, then a foreign one might not make  
21 sense to discuss.

22 Q. Exactly. And the hypothetical license or the  
23 negotiation we're talking to -- about in this case -- you're  
24 familiar with that terminology, hypothetical negotiation,  
25 correct?



1 A. Yes, ma'am.

2 Q. That hypothetical negotiation, they would be discussing  
3 only the U.S. patents, correct?

4 A. I guess what are the patents-in-suit; right.

5 Q. Yes. Well, and if we're in a U.S. courtroom, then we  
6 can only have U.S. patents-in-suit, correct?

7 A. I would presume so, yes.

8 Q. Okay. Now, Ms. Chen, I know that you have not been  
9 allowed to be in the courtroom for most of the testimony  
10 this week, right?

11 A. Right.

12 Q. And that's because of something called the Rule, which  
13 prevents fact witnesses from listening to the testimony of  
14 other fact witnesses, correct?

15 A. Correct.

16 Q. And that's really just to make sure that no one's  
17 testimony is influenced by the testimony of someone else; is  
18 that fair?

19 A. Yes.

20 Q. Okay. But were you in the courtroom for opening  
21 statements?

22 A. Yes, ma'am.

23 MS. HENRY: Can I please have Chen Slide No. 1?

24 Thank you, Mr. Horseman.

25 Q. (By Ms. Henry) Ms. Chen, do you remember when

1 Mr. Kubehl used this slide in Ericsson's opening statement?

2 A. Yes. It looks familiar.

3 Q. Yes. And this is a slide depicting the Ericsson  
4 employees who were nominated to be finalists for the  
5 European Inventor Award of 2014; is that correct?

6 A. Yes, ma'am.

7 Q. Okay. And the picture here shows four inventors, but  
8 there are really eight nominees, right?

9 A. Yes. I see eight names on here.

10 Q. Yes. There are -- I've underlined them just to make it  
11 easier to see, correct?

12 A. Thank you. Yes.

13 Q. Okay. And would it surprise you to know that we've seen  
14 a slide or a slide similar to this numerous times throughout  
15 the course of this case?

16 A. I wouldn't know.

17 Q. But would it surprise you?

18 A. If it was relevant, no.

19 Q. Okay. Well, let's -- let's talk a little bit about  
20 that, please.

21 Ericsson is proud of these eight inventors, right?

22 A. Certainly.

23 Q. Okay. Do they represent the best of the best of what  
24 Ericsson has to offer in terms of LTE?

25 A. They and the others in the research and development

1 group, yes.

2 Q. And Ericsson is proud of the patents that these  
3 inventors have come up with, correct?

4 A. Yes, ma'am.

5 Q. And do those patents represent some of the best of the  
6 best of Ericsson's LTE patents?

7 A. I don't know that we would say -- I mean, they're all --  
8 all of our patents are valuable to us. I don't know that  
9 we've actually singled out any particular one as the best.

10 Q. Well, these are certainly the inventors that Ericsson  
11 has been bringing in front of the jury and touting all week  
12 long, right?

13 A. I wouldn't know.

14 Q. And if you look -- I just want you to take a note of the  
15 names there. You don't need to read them into the record,  
16 but just sort of familiarize yourself with the names, okay?

17 A. All right.

18 Q. Okay.

19 MS. HENRY: Can I please have Chen Slide No. 2?

20 Q. (By Ms. Henry) Now, Ms. Chen, we've talked a lot about  
21 the 18 U.S. patents that were included in the ZTE claim  
22 charts, right?

23 A. Yes.

24 Q. Now, I'll represent to you that here up on the screen,  
25 I've just made a list of all of those 18 patents, all right?

1 A. Okay.

2 Q. Okay. I think the list is accurate. I tried very hard  
3 to make it, but if you'd like to check me, there is also  
4 DTX-536 in your binder, and that's the claim charts  
5 themselves.

6 A. All right.

7 Q. Okay. Now, would it surprise you to find out that half  
8 of these patents list as named inventors those 18 inventors  
9 that Ericsson has been touting all week long?

10 A. One of those eight are -- no, it wouldn't surprise me.

11 MS. HENRY: All right. Could we have Chen Slide  
12 No. 2, please?

13 Q. (By Ms. Henry) So eight -- excuse me -- nine of those  
14 18, half of them list as named inventors one of those eight  
15 inventors that Ericsson has been touting all week long.

16 Does that look right to you.

17 A. I have no reason to object.

18 Q. All right. Well, if you have any question, I've listed  
19 the PTX here on the slide of each of those patents, and all  
20 of those patents are included in your binder, so feel free  
21 to check if you'd like to.

22 A. I don't see any need.

23 Q. So it's not unreasonable, if we've got a list of patents  
24 here, half of whom list as named inventors the very eight  
25 Ericsson inventors that Ericsson has been touting all week

1 long, that they've been showing slides up for their awards,  
2 it is not unreasonable to say that these are the best of the  
3 best of Ericsson's patents, is it?

4 A. I don't know that I would agree with that.

5 Q. Well, Ms. Chen, the truth is that these great Ericsson  
6 inventors, they really don't matter in this case, do they,  
7 regardless of whether or not they've invented these patents  
8 or not.

9 A. I don't think these patents are being asserted.

10 Q. In fact, the 18 Ericsson inventors that they've been  
11 talking about all week long, they could have invented time  
12 travel, and it would not affect the issues that this jury  
13 has to decide in this case, right?

14 A. Correct.

15 Q. We don't doubt that Ericsson has wonderful inventors.  
16 Is that a fair statement?

17 A. I appreciate that, yes. Thank you.

18 Q. But Ericsson is not the only company that has good  
19 ideas, is it?

20 A. No.

21 Q. And the fact that Ericsson has inventors that they're  
22 proud of has absolutely nothing to do with whether or not  
23 Ericsson is infringing Intellectual Ventures's patents, does  
24 it?

25 A. No.

1 Q. Totally unrelated, right?

2 A. Correct.

3 Q. Yeah. In fact, it's a bit of a diversion, isn't it?

4 MR. RUBENSTEIN: Objection, Your Honor.

5 Argumentative.

6 THE COURT: Overruled.

7 A. I honestly wouldn't know. I haven't been following the  
8 case.

9 Q. (By Ms. Henry) That's right, Ms. Chen. So while you're  
10 counsel at Ericsson -- right?

11 A. Yes, ma'am.

12 Q. -- you're not the counsel who has been overseeing this  
13 case on behalf of Ericsson, right?

14 A. Correct.

15 Q. So it wasn't your decision to put those slides up  
16 repetitively in front of the jury, correct?

17 A. I really don't know how often they were put up. I have  
18 nothing to do with it.

19 Q. All right. Thank you.

20 Now, Ms. Chen, can we agree that if Ericsson and  
21 T-Mobile are using the patents-in-suit, that they should pay  
22 for that use?

23 A. Yes.

24 Q. Because patents have value. They're property rights,  
25 and they have value, and they should be respected, right?

1 A. Yes, ma'am.

2 Q. Ericsson certainly demands that of anyone it believes is  
3 infringing its patents, right?

4 A. Yes, ma'am.

5 Q. And Ericsson demands more than just respect if someone  
6 is infringing their patents, right? It demands  
7 compensation, right?

8 A. Yes, ma'am.

9 Q. And there's nothing wrong with IV making that same  
10 demand in this case, is there?

11 A. No, ma'am.

12 Q. And whether you create a patent in-house or buy a patent  
13 from someone else, it's still a property right, and it still  
14 has value, right?

15 A. Yes, ma'am.

16 Q. And infringers should still pay for trespassing that  
17 property, correct?

18 A. Correct.

19 Q. Now, Ms. Chen, we've established that you're not the  
20 Ericsson attorney that's been overseeing this case, correct?

21 A. Yes, ma'am.

22 Q. But there is someone at Ericsson that is overseeing this  
23 case, right?

24 A. Yes, ma'am.

25 Q. But it's not you who's meeting with the lawyers every

1 night and deciding which arguments to make and which  
2 presentations to make in front of the jury, correct?

3 A. Correct.

4 Q. Okay. And you mentioned during your direct testimony  
5 that you clerked for a federal judge; is that right?

6 A. I think I just said a judge, but, yes, I did clerk for a  
7 federal judge.

8 Q. Okay. So you have seen a lot of trials; is that right?

9 A. Yes, ma'am.

10 Q. Okay. And have you ever seen a trial where an attorney  
11 in open court calls an inventor a liar?

12 MR. RUBENSTEIN: Objection, Your Honor, relevance  
13 and argumentative.

14 THE COURT: She can answer if she has or she  
15 hasn't. Overruled.

16 A. I don't remember. It's possible. There have been a lot  
17 of them that have been very combative.

18 Q. (By Ms. Henry) You understand how serious that  
19 allegation is, correct, Ms. Chen?

20 A. To call someone a liar, certainly.

21 Q. Certainly in open court, correct?

22 A. It's a serious allegation no matter what.

23 Q. Yeah. If you had been advising -- if you had been  
24 managing this case, would you have allowed that to happen to  
25 Dr. Jorgensen?



1 A. Not if it wasn't warranted.

2 Q. Thank you.

3 Now, Ms. Chen, would you be surprised to hear that  
4 we've heard several times this week about how Ericsson makes  
5 products and IV doesn't?

6 A. Really have no opinion one way or another.

7 Q. Do you know why Ericsson's lawyers keep saying that?

8 A. No.

9 Q. Okay. Now, you're familiar with patent law, right?

10 A. Yes, ma'am.

11 Q. Okay. And is there a requirement in patent law that you  
12 have to make something in order for your patent to have  
13 value?

14 A. No, ma'am.

15 Q. And is there a requirement in patent law that you have  
16 to make a product in order to be entitled for payment of a  
17 reasonable royalty if someone is trespassing on your patent?

18 A. No, ma'am.

19 Q. In fact, whether or not a company who owns patents makes  
20 products has absolutely nothing to do with whether or not  
21 the Defendant infringes those patents; isn't that right?

22 A. That's right.

23 Q. It doesn't make your patents any less valuable if you  
24 don't make a patent -- make a product, right?

25 A. Correct.

1 Q. And it doesn't make IV a second class business citizen  
2 because it's made the decision to license its innovations to  
3 other companies so that they can go out and make great  
4 products, as opposed to making products itself, correct?

5 A. Correct.

6 Q. And it would be misleading to suggest otherwise to this  
7 jury, wouldn't it?

8 A. I don't know that I would call it misleading. It's --  
9 I'm not sure what would be misleading.

10 Q. You don't think it would be misleading to suggest that  
11 the fact that IV doesn't make a product somehow means their  
12 patents aren't valuable?

13 A. Oh, that -- that would be misleading.

14 Q. Now, Ms. Chen, were you in the courtroom during voir  
15 dire?

16 A. No, ma'am.

17 Q. Okay. Would it surprise you, then, to find out that  
18 Ericsson and T-Mobile's attorneys during voir dire suggested  
19 that 1G, 2G, 3G, and 4G are Ericsson's technology?

20 A. In total?

21 Q. Just if -- if I used those words, 1G, 2G, 3G, and 4G,  
22 that's Ericsson's technology, would that be accurate?

23 A. Well, there's a lot of Ericsson technology in those  
24 standards. We don't own all of it.

25 Q. That's correct. Ericsson did not invent the entirety of

1 LTE, did it?

2 A. No, ma'am.

3 Q. It took a lot of companies, and it took a lot of  
4 inventors to invent LTE, right?

5 A. Yes, ma'am.

6 Q. And Ericsson isn't trying to take credit for all of  
7 those inventions, is it?

8 A. No, ma'am.

9 Q. And, in fact, Nokia was a contributor to LTE, correct?

10 A. Yes, ma'am. To the standardization, yes.

11 Q. And Nokia makes base stations, just like Ericsson,  
12 right?

13 A. Yes, ma'am.

14 Q. And Nokia is a competitor of Ericsson; isn't that right?

15 A. Yes, ma'am.

16 Q. In fact, Nokia is probably Ericsson's primary  
17 competitor; is that fair?

18 A. Probably not.

19 Q. Okay. Well, I'll represent to you that Mr. Norrby,  
20 Ericsson's corporate representative, said in his direct that  
21 Ericsson and Nokia were the Apple and Samsung of the  
22 infrastructure business. Is that a fair characterization?

23 A. Sure.

24 Q. Okay. They're certainly fierce competitors, fair?

25 A. Oh, definitely.

1 Q. Okay. Now, Nokia is an investor in IV, isn't it?

2 A. I don't know.

3 Q. In fact, Nokia invested hundreds of millions of dollars  
4 in IV?

5 MR. RUBENSTEIN: Objection, Your Honor, lacks  
6 foundation.

7 THE COURT: Sustained.

8 Q. (By Ms. Henry) Ms. Chen, are you aware of whether or  
9 not Nokia has a license to IV's patents?

10 A. No, ma'am.

11 Q. You don't know one way or the other?

12 A. No, ma'am.

13 Q. Would that be something important for the jury to  
14 consider in this case?

15 A. I don't know. I don't know what the issues are in this  
16 case.

17 Q. Ms. Chen, you're familiar with the term "inbound  
18 license," right?

19 A. Yes, ma'am.

20 Q. And an inbound license just means a license that  
21 Ericsson takes to someone else's patents; is that fair?

22 A. Yes, ma'am.

23 Q. Okay. And just a way for Ericsson to recognize the  
24 value of someone else's invention?

25 A. Or to -- to license their patents, certainly.

1 Q. Yeah. And you certainly wouldn't license them if you  
2 didn't -- if you didn't value the technology, right?

3 A. We wouldn't license if we didn't think we needed it.

4 Q. All right. And -- and Ericsson has a lot of what we  
5 call cross-licenses; is that fair?

6 A. Yes, ma'am.

7 Q. Okay. And a cross-license is when both companies, you  
8 know, sort of -- for lack of a better word, exchange patent  
9 rights in each other's patents?

10 A. We license each other to each other's patents.

11 Q. Fair enough. That's -- that's a little overly  
12 simplistic, right?

13 A. Well, it is what it is. You're licensing your patents  
14 to the other party.

15 Q. Yeah. And in exchange, you're getting some of their  
16 patents, as well, right?

17 A. Or you're getting a license right to theirs, as well,  
18 yes.

19 Q. Okay. Now, again, you testified on behalf of Ericsson  
20 about its licensing practices; is that correct?

21 A. Correct.

22 Q. Okay. And in prep -- preparation for your testimony,  
23 you did some investigation about Ericsson's straight inbound  
24 licenses?

25 A. For my deposition, yes, I did.

1 Q. All right. And, again, just to remind the jury, the  
2 inbound license is -- is a license when Ericsson takes a  
3 license, pays money for someone else's patent, but doesn't  
4 get any patent rights in return; is that fair?

5 A. Correct.

6 Q. Okay. I apologize. That was probably a pretty bad  
7 question.

8 All right. But when you did your investigation of  
9 Ericsson's inbound licenses, you found that Ericsson  
10 doesn't, in fact, take very many inbound licenses, does it?

11 A. Correct. I don't think we have very many pure inbounds.

12 Q. That's correct. And, in fact, you found that there were  
13 much greater number of outbound licenses than inbound  
14 licenses, correct?

15 A. Greater number of cross-licenses, yes, ma'am.

16 Q. Yes. And you would agree with me --

17 THE COURT: Ms. Henry, you seem to have a habit of  
18 commenting on the answers. When she gives an answer, you  
19 say that's correct, or you say yes. That's an improper  
20 statement. Don't comment on her answers. Just ask the next  
21 question, and let her answer the questions, please.

22 MS. HENRY: I apologize, Your Honor. Thank you.

23 THE COURT: Let's continue.

24 Q. (By Ms. Henry) So, Ms. Chen, while Ericsson often  
25 charges other companies for the use of its technology, it

1 very rarely pays other companies purely for the use of their  
2 own technology; isn't that right?

3 A. Sorry. I'm just trying to make sure I understood what  
4 you're asking. It is rare that we take a license to  
5 somebody else's patents where they don't need a license to  
6 ours.

7 Q. And is that because Ericsson thinks it's the only one  
8 with good ideas?

9 A. No.

10 Q. You would agree with me that it's this jury that's going  
11 to decide how good of an idea Mr. Jorgensen had, correct --  
12 Dr. Jorgensen had, excuse me.

13 A. Sure.

14 Q. And it's this jury that's going to decide how much  
15 money IV is owed for Mr. Jorgensen's idea; isn't that  
16 correct?

17 A. Yes, ma'am.

18 Q. Thank you very much.

19 MS. HENRY: I pass the witness.

20 THE COURT: Redirect, Mr. Rubenstein?

21 MR. RUBENSTEIN: Very briefly, Your Honor.

22 THE COURT: Let's proceed.

23 REDIRECT EXAMINATION

24 BY MR. RUBENSTEIN:

25 Q. Ms. Chen, when Ericsson thinks that it needs to take a

1 license, does it take one?

2 A. Yes, sir.

3 Q. And do you believe it is okay to come to court and  
4 defend yourself against allegations of patent infringement  
5 if you believe you do not infringe?

6 A. Yes, sir.

7 Q. Thank you.

8 MR. RUBENSTEIN: Pass the witness.

9 THE COURT: All right. Further cross-examination?

10 MS. HENRY: No, Your Honor.

11 THE COURT: All right. Ms. Chen, you may step  
12 down.

13 MR. RUBENSTEIN: Your Honor, may the witness be  
14 excused?

15 THE COURT: Any objection?

16 Any objection to her being excused, Ms. Henry?

17 MS. HENRY: Oh. I apologize, Your Honor. No.

18 THE COURT: All right. Then the witness is  
19 excused.

20 Ms. Chen, you're free to leave, you're free to  
21 stay.

22 THE WITNESS: Thank you, sir.

23 THE COURT: All right. Ladies and gentlemen before  
24 the Defendant calls their next witness, we're going to take  
25 a recess.



1           Just simply close and leave your notebooks in your  
2 chairs, if you will.

3           Follow all my instructions, including not to  
4 discuss the case among yourselves, and we'll be back shortly  
5 to continue.

6           The jury is excused for recess.

7           COURT SECURITY OFFICER: All rise.

8           (Jury out.)

9           THE COURT: The Court stands in recess.

10          (Recess.)

11          COURT SECURITY OFFICER: All rise.

12          THE COURT: Be seated, please.

13          Are the Defendants prepared to call their next  
14 witness?

15          MR. RUBENSTEIN: Yes, Your Honor. The Defendants  
16 call Dr. Stephen Becker.

17          THE COURT: All right. Let me bring in the jury,  
18 and we'll get that on the record.

19          Let's bring in the jury, please.

20          COURT SECURITY OFFICER: All rise.

21          (Jury in.)

22          THE COURT: Please be seated, ladies and gentlemen.  
23 Defendants, call your next witness.

24          MR. RUBENSTEIN: Thank you, Your Honor. Defendants  
25 call Dr. Stephen Becker.

1 THE COURT: All right. Dr. Becker, if you'll come  
2 forward and be sworn, please.

3 (Witness sworn.)

4 THE COURT: Please come around, sir, and have a  
5 seat on the witness stand.

6 Mr. Rubenstein, Dr. Becker is no relation to Jeff  
7 Becker, your co-counsel, is he?

8 MR. RUBENSTEIN: Correct, Your Honor. No relation.

9 THE COURT: All right. We'll get that out of the  
10 way.

11 MR. RUBENSTEIN: All right.

12 THE COURT: You may proceed with direct  
13 examination.

14 MR. RUBENSTEIN: Thank you, Your Honor.

15 STEPHEN BECKER, PH.D., DEFENDANTS' WITNESS, SWORN

16 DIRECT EXAMINATION

17 BY MR. RUBENSTEIN:

18 Q. Good morning, Dr. Becker.

19 A. Good morning.

20 Q. Would you please introduce yourself to the jury?

21 A. Yes. My name is Stephen Becker.

22 Q. And where are you from, Dr. Becker?

23 A. I'm from Austin. I live in Austin now. Born and raised  
24 in Austin, and other than a few stints in Dallas and  
25 Houston, I've lived in Austin all my life.

1 Q. Would you please tell us a little bit about your  
2 educational background?

3 A. Sure. I have an undergraduate degree in computer  
4 science and electrical engineering from the University of  
5 Pennsylvania. And then a Master's in finance, a Master's in  
6 business administration from UT Austin, and a Ph.D. in  
7 public policy from UT Austin.

8 Q. Now, Dr. Becker, do you belong to any professional  
9 organizations?

10 A. I do. I -- I'm a member of the American Economic  
11 Association, the American Finance Association, something  
12 called the Licensing Executive Society, an organization  
13 called the National Association of Certified Valuers and  
14 Analysts, and then the American Bar Association, I maintain  
15 a membership in a -- an affiliate membership in an org --  
16 part of the Bar Association that concerns itself with patent  
17 law and licensing activity. I'm not a -- not a lawyer.

18 Q. Where do you currently work, sir?

19 A. I work for a firm called Applied Economics Consulting  
20 Group in Austin. This is a firm that I founded -- actually  
21 next month will be the 20th anniversary of the founding of  
22 that firm.

23 Q. And would you please explain to the jury a bit about the  
24 type of work that you do?

25 A. Yes. For the entirety of that 20 years, what Applied

1 Economics does and what I do is provide economic and  
2 financial consulting to companies in a variety of  
3 industries.

4           The common thread through all of that is that we  
5 are always -- almost always looking at the value of assets,  
6 either the value of intellectual property assets. I do a  
7 lot of work in the energy industry valuing oil and gas  
8 production and sort of a whole host of different kinds of  
9 assets. But the common thread is what's the economic value  
10 of things.

11 Q. And have those projects that you've worked on include  
12 patent damages like this case here?

13 A. They have.

14 Q. And how many times have you been involved in assessing  
15 the value of -- of patents in -- in matters like these?

16 A. I've been a patent damages expert in over a hundred  
17 different patent cases.

18 Q. And by whom were you retained?

19 A. Over the last 20 years in those hundred-plus cases, it  
20 has fallen about 50/50 times that I work on behalf of the  
21 patentholder, like IV in this case, or half the time on  
22 behalf of the Defendant in the particular case.

23 Q. And in this case, you're here on behalf of Ericsson and  
24 T-Mobile?

25 A. Yes, sir.

1 MR. RUBENSTEIN: Your Honor, at this time I'd  
2 tender Dr. Becker as an expert witness on the issue of  
3 patent damages.

4 THE COURT: Is there objection?

5 MR. WARD: No objection.

6 THE COURT: The Court will recognize the witness as  
7 an expert in the designated field.

8 Continue, counsel.

9 MR. RUBENSTEIN: Thank you, Your Honor.

10 Q. (By Mr. Rubenstein) Now, Dr. Becker, before we get into  
11 the nuts and bolts of your opinions, you have been in the  
12 courtroom during the course of this entire trial; is that  
13 right?

14 A. Most of it. I was out for a couple of witnesses  
15 yesterday.

16 Q. And have you heard the discussion about the Ericsson --  
17 the 18 Ericsson patents that were sent to ZTE?

18 A. I have.

19 Q. Can you tell us the only reason why we are talking about  
20 those patents in this case, please?

21 A. Yes. We'll get into this a little more later in my  
22 testimony, but the only reason, at least from the  
23 perspective of anything to do with damages in this case,  
24 that those 18 patents or really any of Ericsson's patents  
25 are relevant is that Mr. Bratic chose to base his entire

1 damages model essentially on those 18 patents.

2 Q. And do you believe that's proper?

3 A. No.

4 Q. All right. Now, what was your assignment in this case,  
5 Dr. Becker?

6 A. I had two assignments. The first was to determine a  
7 reasonable royalty for the three asserted patents in this  
8 case. That's my primary assignment and the primary thing I  
9 have come up with an opinion on.

10 I also was asked to review and comment on  
11 Mr. Bratic's opinions, both the opinions that he offered in  
12 his report that he filed in this case, and I was here for  
13 his testimony, and I'm prepared to offer some comments on  
14 the testimony that he gave.

15 Q. And simply because you are here to discuss with the jury  
16 about damages that you think may be appropriate here, that  
17 doesn't mean that you believe Ericsson and T-Mobile infringe  
18 the patents, does it?

19 A. No. I don't have an opinion about that either way, and  
20 it wouldn't be appropriate for me to have an opinion.

21 In a patent damages expert's role, same with  
22 Mr. Bratic, we have to assume for the purposes of our work  
23 that -- you know, what would be the answer if there is a  
24 finding that the patents are infringed and if there is no  
25 finding that the patents are invalid.

1           So in that world, what's the right damages number,  
2 what's reasonable? But as a patent damages expert, I don't  
3 have an opinion on whether there's any infringement and  
4 whether the patents are valid or invalid.

5 Q. Now, before we get into the details of your analysis,  
6 would you give us a little bit of a preview of your  
7 opinions?

8 A. Sure. The opinion that I will explain today is that the  
9 appropriate structure of the license that Ericsson and  
10 T-Mobile would get from Intellectual Ventures is a  
11 non-exclusive U.S. license to the three asserted patents.

12           And with that as the thing that we're trying to  
13 value, it's my opinion that the right number, a reasonable  
14 number is a lump-sum royalty in the range of 110,000 to up  
15 to 1.4 million.

16 Q. And do you recall hearing Mr. Bratic testify about his  
17 belief that the damages should be \$77 million?

18 A. Yes.

19 Q. That's a pretty big difference, don't you think?

20 A. It's a very big difference.

21 Q. Have you studied Mr. Bratic's work to understand how he  
22 arrived at his opinions?

23 A. Yes. In quite a bit of detail, yes.

24 Q. Will you be able to tell the jury where you think he got  
25 it wrong?

1 A. I will.

2 Q. And would you please give the jury a little bit of  
3 preview of those major errors?

4 A. Sure. I -- there's a lot of -- lot of details to what I  
5 think he got wrong, but at a very high level, there are four  
6 main things that I think explain the difference between his  
7 opinion and what I think is reasonable.

8 The first is that we heard him talk about this per  
9 subscriber month running royalty where he's counting the  
10 number -- not just the number of subscribers but how many  
11 months.

12 I think that's unreasonable, and I'll talk to you  
13 about why that is.

14 The second point is that this \$77 million opinion  
15 that he has is based -- he starts with looking at handset  
16 licenses, not the base station -- not the base stations or  
17 the base station licenses that were available to him that  
18 are the issue in this case.

19 Third, I think there's a big issue with how he has  
20 used Dr. Chrissan's relative value analysis. That drives a  
21 large inflation in his number.

22 And, fourth, he fails to account for licensed  
23 handsets.

24 We'll talk about all four of those.

25 Q. And do these four errors that we see on this slide



1 explain the big difference between your opinion and his?

2 A. It does. I think if -- if he had not made those errors,  
3 you could start with his 77 million and essentially get all  
4 the way down to -- in the range that I have by just fixing  
5 those four things.

6 Q. Okay. So let's get into the details of your analysis,  
7 please. Would you explain for the jury how you went about  
8 determining what you believe to be the reasonable royalty in  
9 this case?

10 A. Sure. The basic approach that I took is not unlike what  
11 Mr. Bratic did, and that's very common in -- for any patent  
12 damages expert to do this. It's something called the  
13 hypothetical negotiation.

14 As Mr. Bratic described, we imagine a world back in  
15 February of 2013 where Intellectual Ventures and -- on the  
16 one hand, and T-Mobile and Ericsson, on the other hand, come  
17 into a room and sit down and say, all right, let's put our  
18 cards on the table and see if we can negotiate a reasonable  
19 royalty for these three patents.

20 Q. And are there certain assumptions that you have to make  
21 in this hypothetical negotiation?

22 A. Yes. There are a couple of key assumptions.

23 The first is that the parties come in understanding  
24 or at least believing that they need a license.

25 Ericsson and T-Mobile understand that they need to

1 take a license. They need to leave this negotiation with a  
2 license. There's no dispute about the validity and  
3 infringement.

4 The reality is that we're here, that there is a big  
5 dispute about the validity and infringement. But in this  
6 negotiation, we assume they're no longer disputing that.

7 Second, the parties are assumed to both be willing  
8 to enter into a license, and the result has to be something  
9 that's acceptable to both sides.

10 And, lastly, the cards are dealt face up. There's  
11 no secrets in this negotiation. Intellectual Ventures would  
12 know -- IV would know Ericsson and T-Mobile's -- sort of  
13 details about their business, and Ericsson and T-Mobile  
14 would know things about Intellectual Ventures that in a real  
15 negotiation, they may not know.

16 Q. What type of evidence did you consider while performing  
17 your analysis, Dr. Becker?

18 A. I looked at quite a bit of evidence. In a case like  
19 this, there's thousands and thousands of pages of documents  
20 produced by the parties. My staff and I have reviewed  
21 significant portions of that. There are expert reports,  
22 both technical expert reports and damages reports.

23 I've had discussions with Ericsson's technical  
24 experts. I've reviewed deposition testimony and exhibits.  
25 And my staff and I also did research on publicly available

1 information about the relevant industry.

2 Q. And so how did you take this evidence and determine what  
3 the outcome of this hypothetical negotiation would be?

4 A. Well, there's a checklist called the Georgia-Pacific  
5 factors that comes from a patent case back in the 1970s that  
6 provides sort of a checklist of things that a patent damages  
7 expert can look at to determine the outcome of a  
8 hypothetical negotiation.

9 It's not -- we don't have to just look at those  
10 things, there's oftentimes other evidence that's relevant,  
11 but this serves as a checklist.

12 Q. And did you consider all of these factors?

13 A. I did.

14 Q. Were all of them relevant to this case?

15 A. No. In any case, you're going to have different factors  
16 that turn out to be more important than others. It depends  
17 on the evidence. And here, not every factor was relevant.

18 Q. Were there one or two that stuck out to you in this  
19 case?

20 A. Well, as we'll go through in the details of my  
21 testimony, I think Georgia-Pacific Factor 1 is a good  
22 example of one that I thought was very relevant. It's -- we  
23 see it's the royalties received by the patentee for the  
24 licensing of the patent-in-suit.

25 So in the context of this case, that question is:

1 Has IV received royalties specifically attributable to the  
2 patents -- to these three patents? And we'll talk about  
3 that evidence, but there's quite a bit of evidence in that  
4 regard.

5 Q. What did you conclude was the most important evidence in  
6 this case?

7 A. The three general areas of evidence that I found to be  
8 relevant, first, is the evidence of the reasonable  
9 structure.

10 In any patent license, one of the first questions  
11 is: How are we going to structure this? Is it going to be  
12 a single payment that we call a lump-sum payment, or is it  
13 going to be a running royalty where every month or every  
14 quarter or every year, you make payments based on the amount  
15 of sales of the products at issue? So we've got to decide  
16 the structure first.

17 Then I also think that it's important to look at  
18 the value allocated by Intellectual Ventures to these three  
19 patents. There's quite a bit of evidence of that, and I  
20 think it's highly relevant.

21 The third is I looked at evidence to figure out  
22 what I believe is a license amount that those parties could  
23 have agreed to that would be consistent with IV's business  
24 strategy.

25 Q. Okay. Dr. Becker, let's talk about that evidence. What

1 do you mean by licensed structure?

2 A. Well, I touched on this a bit, that when you structure a  
3 patent license, the parties have to agree how to make the  
4 payment. Generally speaking, patent licenses fall into two  
5 categories: Lump sum or running royalty.

6 Just like you could walk into a car dealership and  
7 buy a car and you can say, I'll just -- I'll just write you  
8 a check for the whole thing -- that's a lump sum -- or you  
9 could agree to pay for it over time. That's more of a  
10 running royalty.

11 Q. Now --

12 A. And so we've got to figure out, based on the evidence in  
13 the case, which structure is the right one.

14 Q. Now, Mr. Bratic assumed that it would be a running  
15 royalty; is that right?

16 A. He did. He assumed a running royalty, and in  
17 particular, he assumed something that he -- that is really  
18 more than a typical running royalty. It's -- it's a  
19 per-subscriber per-month running royalty.

20 Q. Do you agree with Mr. Bratic's assumption?

21 A. No.

22 Q. And how did you go about figuring out which structure  
23 was the most reasonable?

24 A. So I looked at the evidence in the case, and I find that  
25 it is overwhelmingly in support of a lump sum. And there

1 are a couple of factors that really drove that -- that  
2 outcome. I think I have a slide on that.

3 MR. RUBENSTEIN: Before we do that, Your Honor,  
4 we're about to get into some confidential information of IV,  
5 and we'd request to seal the courtroom, please.

6 THE COURT: All right. Based on that  
7 representation and counsel's request, I'll order the  
8 courtroom sealed at this time. Those present not subject to  
9 the protective order in this case should exit the courtroom  
10 and remain outside until it's reopened.

11 Mr. Ward?

12 MR. WARD: Yes, Your Honor. Since it's IV's  
13 confidential information, I'd request the same courtesy that  
14 we extended to opposing counsel and let IV remain in the  
15 courtroom.

16 THE COURT: Do you have any problem,  
17 Mr. Rubenstein?

18 MR. RUBENSTEIN: Did you misspeak? Are you talking  
19 about -- oh, to let IV remain in the courtroom. I'm sorry.  
20 I misheard you. I have no objection to that.

21 THE COURT: All right. IV's personnel may remain,  
22 since this is IV's confidential information.

23 (Courtroom sealed.)

24 (Sealed Portion No. 8 saved in separate sealed  
25 transcript.)

1 (Courtroom unsealed.)

2 THE COURT: The jury is excused for lunch at this  
3 time.

4 COURT SECURITY OFFICER: All rise.

5 (Jury out.)

6 THE COURT: Court stands in recess.

7 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

2/7/19  
Date